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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 268

**MISSOURI-KANSAS PIPE LINE COMPANY,
APPELLANT,**

vs.

**THE UNITED STATES OF AMERICA, COLUMBIA GAS
& ELECTRIC CORPORATION, COLUMBIA OIL &
GASOLINE CORPORATION, ET AL.**

No. 269

**PANHANDLE EASTERN PIPE LINE COMPANY,
APPELLANT,**

vs.

**THE UNITED STATES OF AMERICA, COLUMBIA GAS
& ELECTRIC CORPORATION, COLUMBIA OIL &
GASOLINE CORPORATION, ET AL.**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF DELAWARE**

FILED JULY 22, 1940.

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THE DISTRICT OF DELAWARE

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1940.

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[fol. 1]

[Caption omitted]

**IN UNITED STATES DISTRICT COURT, DISTRICT
OF DELAWARE**

No. 1099. In Equity

UNITED STATES OF AMERICA, Petitioner,

v.

COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL &
GASOLINE CORPORATION, George H. Howard, Phillip G.
Gossler, Charles A. Munroe, George W. Crawford,
Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay,
and John H. Hillman, Jr., Defendants

DOCKET ENTRIES

Mar. 6, 1935. Petition filed; same day subpoenas issued returnable March 26, 1935.

Mar. 7, 1935. Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation appear by Clarence A. Southerland Esq., their solicitor; same day praecipe filed.

Mar. 11, 1935. Marshal returns on subpoena for Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation "Served", etc.; same day writ filed.

Mar. 11, 1935. Marshal returns on subpoena for George W. Crawford, Thomas B. Gregory and John H. Hillman, Jr. "Served", etc.; same day writ filed.

Mar. 14, 1935. Marshal returns on subpoena for Burt R. Bay "Served", etc.; same day writ filed.

[fol. 2] Mar. 15, 1935. John H. Hillman, Jr. appears by Richards, Layton & Finger, his solicitors; same day praecipe filed.

Mar. 21, 1935. Marshal returns on subpoena for George H. Howard, Philip G. Gossler and Edward Reynolds, Jr. "Served" etc.; same day writ filed.

Mar. 21, 1935. Burt R. Bay appears by Charles F. Curley, Esq., his solicitor; same day praecipe filed.

Mar. 26, 1935. Stipulation filed; same day order extending time for filing answers until April 15, 1935; same day order filed.

Mar. 29, 1935. Motion of Clarence A. Southerland filed; same day order granting leave to withdraw as solicitor for Columbia Oil & Gasoline Corporation; same day order filed.

Mar. 29, 1935. Marshal returns on subpoena for Charles A. Munroe "Served", etc.; same day writ filed.

Apr. 2, 1935. Columbia Oil & Gasoline Corporation appears by Hugh M. Morris, Esq. and Ivan Culbertson, Esq., its solicitors; same day praecipe filed.

Apr. 13, 1935. Stipulation filed; same day order extending time for filing answer until April 30, 1935; same day order filed.

Apr. 24, 1935. Motion of Union Trust Company of Pittsburgh, et al., Executors to dismiss bill of complaint as to George W. Crawford, deceased, filed.

Apr. 24, 1935. Motion of Columbia Gas & Electric Corporation, et al. to strike certain language from bill, filed.

Apr. 24, 1935. Motion of Columbia Gas & Electric Corporation, et al. for bill of particulars filed.

Apr. 24, 1935. Order extending time for filing answer, etc. by Columbia Gas & Electric Corporation, et al.; same day order filed.

Apr. 24, 1935. Motion of John H. Hillman, Jr. for bill of particulars filed.

Apr. 24, 1935. Motion of John H. Hillman, Jr. to strike certain language from bill filed.

Apr. 24, 1935. Motion of Burt R. Bay for bill of particulars filed.

Apr. 24, 1935. Motion of Burt R. Bay to strike certain language from bill filed.

[fol. 3] Apr. 25, 1935. Motion of Columbia Oil & Gasoline Corporation for bill of particulars filed; same day order extending time for filing answer, &c.; same day order filed.

Apr. 25, 1935. Motion of Columbia Oil & Gasoline Corporation to strike certain language from bill, &c.; filed; same day order extending time for filing answer, &c.; same day order filed.

Octo. 30, 1935. Burt R. Bay appears by James M. Malloy, Esq., his solicitor; same day praecipe filed.

Octo. 30, 1935. Application by plaintiff filed; same day order granting leave to file amended and supplemental petition; same day order filed.

Octo. 30, 1935. Amended and supplemental petition filed.

Nov. 20, 1935. Stipulation filed; same day order extend-

ing time for filing answer, &c. to amended petition until December 10, 1935; same day order filed.

Dec. 10, 1935. Motion of Defendants to strike certain portions of amended and supplemental petition filed.

Dec. 10, 1935. Order extending time for filing answer until after disposition of motion to strike; same day order filed.

Jany. 29, 1936. Charles A. Munroe appears by Hugh M. Morris, Esq. and Ivan Culbertson, Esq. his attorneys; same day praecipe filed.

Jany. 29, 1936. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr., filed.

Jany. 29, 1936. Answer of Columbia Oil & Gasoline Corporation and Charles A. Munroe filed.

Jany. 29, 1936. Answer of John H. Hillman, Jr. filed.

Jany. 29, 1936. Answer of Burt R. Bay filed.

Jany. 29, 1936. Stipulation filed.

Jany. 29, 1936. Final decree that defendants be enjoined, and appointing Gano Dunn as trustee, &c.; same day decree filed.

May 14, 1936. First account of Gano Dunn, Trustee, filed. [fol. 4] May 16, 1936. Order setting account of Gano Dunn, Trustee down for consideration, May 21, 1936 at 1:00 o'clock P. M.; same day order filed. (Exit copies.)

May 21, 1936. Hearing on First account of Gano Dunn, Trustee.

June 19, 1936. Stipulation filed; same day decree amending decree of January 29, 1936, &c.; same day decree filed.

Aug. 12, 1936. Report of Gano Dunn, Trustee, filed.

Aug. 18, 1936. Second account of Gano Dunn, Trustee, filed.

Dec. 8, 1936. Account of Gano Dunn, Trustee, filed.

Feb. 16, 1937. Account of Gano Dunn, Trustee, filed.

Mar. 1, 1937. Report of Gano Dunn, Trustee for semi-annual period, filed.

May 25, 1937. Account of Gano Dunn, Trustee, filed.

Aug. 20, 1937. Account of Gano Dunn, Trustee, filed.

Sept. 18, 1937. Account of Gano Dunn, Trustee, filed.

Nov. 20, 1937. Account of Gano Dunn, Trustee, filed.

Feb. 7, 1938. Report of Gano Dunn, Trustee for semi-annual period, filed.

Mar. 8, 1938. Account of Gano Dunn, Trustee, filed.

May 20, 1938. Account of Gano Dunn, Trustee, filed.

Aug. 11, 1938. Report of Gano Dunn, Trustee, for semi-annual period, filed.

Sept. 21, 1938. Account of Gano Dunn, Trustee, filed.

Dec. 9, 1938. Account of Gano Dunn, Trustee, filed.

Dec. 21, 1938. Motion of plaintiff for leave to file supplemental complaint, with complaint annexed, filed; same day order setting motion down for hearing on ten days' notice, &c.; same day order filed.

Dec. 23, 1938. Marshal returns on copy of notice of motion for leave to file supplemental complaint "Served", etc.; same day copy filed.

Jany. 12, 1939. Order granting leave to file supplemental complaint; same day order and supplemental complaint filed.

[fol. 5] Jany. 12, 1939. Daniel O. Hastings Esq. appears as solicitor for Columbia Oil & Gasoline Corporation; same day praecipe filed.

Jany. 17, 1939. Order granting James M. Malloy, Esq. leave to withdraw as solicitor for Burt R. Bay; same day order filed.

Jany. 31, 1939. Charles A. Munroe appears by Daniel O. Hastings, Esq. his attorney; same day praecipe filed.

Feby. 1, 1939. Stipulation filed; same day order extending time for filing answers, &c.; same day order filed.

Feby. 6, 1939. Motion of Missouri-Kansas Pipe Line Company for leave to intervene, with petition annexed, filed; same day order setting motion for hearing February 10, 1939; same day order filed.

Feby. 7, 1939. Proof of service of motion filed.

Feby. 8, 1939. Order continuing hearing on motion of Missouri-Kansas Pipe Line Company for leave to intervene until February 24, 1939; same day order filed.

Feby. 20, 1939. Stipulation filed; same day order extending time for filing answer, &c.; same day order filed.

Feby. 22, 1939. Report of Gano Dunn, Trustee, filed.

Feby. 24, 1939. Answer of John H. Hillman, Jr. to supplemental complaint filed.

Feby. 24, 1939. Affidavit as to service filed.

Feby. 24, 1939. Hearing on petition of Missouri-Kansas Pipe Line Company for leave to intervene.

Mar. 3, 1939. Account of Gano Dunn, Trustee, filed.

Mar. 16, 1939. Stipulation filed; same day order extending time for filing answer, &c.; same day order filed.

Mar. 29, 1939. Opinion of court filed.

Mar. 30, 1939. Order denying motion of Missouri-Kansas Pipe Line Company for leave to intervene, &c.; same day order filed.

Apr. 3, 1939. Motion of City of Detroit for leave to intervene and file complaint, filed.

Apr. 4, 1939. Stipulation filed; same day order extending time for filing answer, &c.; same day order filed.

[fol. 6] Apr. 22, 1939. Order granting City of Toledo leave to file motion for leave to intervene; same day motion filed.

Apr. 22, 1939. Hearing on motion of City of Detroit for leave to intervene, filed.

Apr. 25, 1939. Motion of defendants filed; same day order extending time for filing answer, &c.; same day order filed.

May 4, 1939. Consent by United States to intervention by City of Detroit and City of Toledo, filed.

May 15, 1939. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr. to supplemental complaint filed.

May 15, 1939. Answer of Columbia Oil & Gasoline Corporation and Charles A. Munroe filed.

May 15, 1939. Motion of United States of America to abandon supplemental complaint; same day order setting motion for hearing June 12, 1939; same day order filed.

May 15, 1939. Notice of motion for order vacating consent decree and leave to file amended and supplemental complaint, with motion and proposed amended and supplemental complaint filed.

May 26, 1939. Report of Gano Dunn, Trustee, filed.

June 12, 1939. Hearing on motion of petitioner to vacate consent decree with leave to file amended and supplemental bill.

June 14, 1939. Motion of Hugh M. Morris, Esq. and Ivan Culbertson, Esq. filed; same day order granting leave to withdraw as attorneys for Columbia Oil & Gasoline Corporation; same day order filed.

June 20, 1939. Motion of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation for approval of plan for modification of consent decree, &c. filed; same day order setting motion for hearing July 10, 1939; same day order filed. (Exit copies.)

June 22, 1939. Opinion of court filed.

[fol. 7] June 22, 1939. Order denying motion by City of Detroit for leave to intervene; same day order filed.

June 22, 1939. Order denying motion by City of Toledo for leave to intervene; same day order filed.

June 26, 1939. Notice of appeal by Missouri-Kansas Pipe Line Company with bond for costs in the sum of Two Hundred and Fifty Dollars (\$250.00) with The Aetna Casualty and Surety Company as surety, filed; same day copy of notice mailed to attorneys for plaintiff and defendants.

July 5, 1939. Affidavit of Robert J. Glasser as to service filed.

July 5, 1939. Petition of Missouri-Kansas Pipe Line Company for leave to intervene, filed.

July 10, 1939. Order denying petition of Missouri-Kansas Pipe Line Company for leave to intervene; same day order filed.

July 10, 1939. Order referring motion of defendants with proposed plan for modification of Consent Decree, &c. to William Prickett, Esq. as Special Master; same day order filed. (Exit copy to Special Master.)

July 14, 1939. Notice of appeal by Missouri-Kansas Pipe Line Company filed; same day copy of notice mailed to attorneys for plaintiff and defendants.

July 29, 1939. Bond of Missouri-Kansas Pipe Line Company on appeal in the sum of \$250.00 with The Aetna Casualty and Surety Company, as surety, filed.

July 29, 1939. Opinion of William Prickett, Esq. Special Master filed.

July 29, 1939. Summary of plan, findings of act, conclusions of law and recommendations of Special Master and testimony before him filed.

July 29, 1939. Praecipe of Missouri-Kansas Pipe Line Company for transcript of record on appeal from order of March 30, 1939, filed.

July 29, 1939. Praecipe of Missouri-Kansas Pipe Line Company for transcript of record on appeal from order of July 10, 1939, filed.

Aug. 2, 1939. Order extending time for filing transcript of record on appeal from order of March 30, 1939, until August 15, 1939; same day order filed.

[fol. 8] Aug. 5, 1939. Report of William Prickett, Esq. Special Master with papers therein mentioned filed.

Aug. 7, 1939. Objections by Columbia Oil & Gasoline Corporation to report of Special Master filed.

Aug. 7, 1939. Objections by Columbia Gas & Electric Corporation to report of Special Master filed.

Aug. 7, 1939. Objections by United States of America to report of Special Master filed.

Aug. 8, 1939. Objections by Missouri-Kansas Pipe Line Company to report of Special Master filed.

Aug. 8, 1939. Cross praecipe by Columbia Oil & Gasoline Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of March 30, 1939, filed.

Aug. 8, 1939. Cross praecipe by Columbia Oil & Gasoline Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of July 10, 1939, filed.

Aug. 8, 1939. Cross-praecipe by Columbia Gas & Electric Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of March 30, 1939, filed.

Aug. 8, 1939. Cross-praecipe by Columbia Gas & Electric Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of July 10, 1939, filed.

Aug. 10, 1939. Transcript of record on appeal from order of March 30, 1939, certified and delivered to Clerk U. S. Circuit Court of Appeals.

Aug. 10, 1939. Transcript of record on appeal from order of July 10, 1939, certified and delivered to Clerk U. S. Circuit Court of Appeals.

Aug. 11, 1939. Affidavits of service of objections of Missouri-Kansas Pipe Line Company to report of Special Master, filed.

Aug. 12, 1939. Objections of City of Detroit to report of Special Master filed.

Aug. 22, 1939. Report of Gano Dunn, Trustee, filed.

Sept. 12, 1939. Report of Gano Dunn, Trustee, filed.

Octo. 20, 1939. Petition of William Prickett, Esq., Special Master, filed; same day order that he be allowed the sum [fol. 9] of \$5,000.00 for his services and expenses, &c.; same day order filed.

Octo. 25, 1939. Petition of John H. Hillman, Jr., with notice of motion and stipulation filed, same day order modifying consent decree, &c.; same day order filed.

Nov. 1, 1939. Petition of Missouri-Kansas Pipe Line Company filed; same day order postponing hearing of

exceptions to report of Special Master; same day order filed.

Nov. 30, 1939. Report of Gano Dunn, Trustee, filed.

Feby. 9, 1940. Report of Gano Dunn, Trustee, filed.

Feby. 27, 1940. Report of Gano Dunn, Trustee, filed.

Mar. 23, 1940. Application of Panhandle Eastern Pipe Line Company to be made a party, &c. filed; same day order setting same down for hearing April 1, 1940, at 10:00 o'clock A. M.; same day order filed.

Mar. 29, 1940. Motion of Columbia Gas & Electric Corporation to dismiss application of Panhandle Eastern Pipe Line Company, with affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson, filed.

Mar. 29, 1940. Motion of Columbia Oil & Gasoline Corporation to dismiss application of Panhandle Eastern Pipe Line Company, with affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson, filed.

Apr. 1, 1940. Hearing on motions to dismiss application of Panhandle Eastern Pipe Line Company.

Apr. 6, 1940. Opinion of court filed.

Apr. 16, 1940. Application of Missouri-Kansas Pipe Line Company to become a party, &c. filed; same day order setting same down for hearing April 23, 1940 at 10:00 o'clock A. M.; same day order filed.

Apr. 23, 1940. Order denying application of Panhandle Eastern Pipe Line Company for leave to become a party, &c.; same day order filed.

Apr. 23, 1940. Hearing on application of Missouri-Kansas Pipe Line Company to become party, &c.; same day order denying application; same day order filed.

[fol. 10] Apr. 23, 1940. Hearing on exceptions to report of William Prickett, Special Master.

May 27, 1940. Account of Gano Dunn, Trustee, filed.

May 31, 1940. Mandate of U. S. Circuit Court of Appeals for Third Circuit dismissing appeal from order of March 30, 1939 and that Missouri-Kansas Pipe Line Co. recover against Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, the sum of \$1665.23 costs, filed.

May 31, 1940. Mandate of U. S. Circuit Court of Appeals for Third Circuit dismissing appeal from order of July 10, 1939, and that Columbia Gas & Electric Corporation, et al. recover against Missouri-Kansas Pipe Line Company the sum of \$20.00 costs, filed.

June 14, 1940. Petition of Missouri-Kansas Pipe Line Company for appeal with assignment of errors and jurisdiction statement filed; same day order allowing appeal, bond in the sum of \$250.00; same day order filed, and citation issued.

June 14, 1940. Petition of Panhandle Eastern Pipe Line Company for appeal with assignments of errors and jurisdiction statement filed; same day order allowing appeal, bond in the sum of \$250.00; same day order filed, and citation issued.

June 18, 1940. Missouri-Kansas Pipe Line Company deposits in registry the sum of \$250.00 in lieu of bond on appeal.

June 18, 1940. Panhandle Eastern Pipe Line Company deposits in registry the sum of \$250.00 in lieu of bond on appeal.

June 18, 1940. Notice of allowance of appeal of Missouri-Kansas Pipe Line Company; filed.

June 18, 1940. Notice of allowance of appeal of Panhandle Eastern Pipe Line Company filed.

June 18, 1940. Praecipe of Missouri-Kansas Pipe Line Company for transcript of record on appeal, filed.

June 18, 1940. Praecipe of Panhandle Eastern Pipe Line Company for transcript of record on appeal, filed.

[fol. 11] June 18, 1940. Citation on appeal of Missouri-Kansas Pipe Line Company with acceptance of service by attorneys for appellees endorsed thereon, filed.

June 18, 1940. Citation on appeal of Panhandle Eastern Pipe Line Company, with acceptance of service by attorneys for appellees endorsed thereon, filed.

June 28, 1940. Counter-praecipe of Columbia Gas & Electric Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

June 28, 1940. Counter-praecipe of Columbia Gas & Electric Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

June 28, 1940. Counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

June 28, 1940. Counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

July 1, 1940. Amendment to praecipe of Missouri-Kansas Pipe Line Company, filed.

July 1, 1940. Amendment to praecipe of Panhandle Eastern Pipe Line Company, filed.

July 6, 1940. Amendment to praecipe of Missouri-Kansas Pipe Line Company, filed.

July 6, 1940. Amendment to praecipe of Panhandle Eastern Pipe Line Company, filed.

July 13, 1940. Amendment to counter-praecipe of Columbia Gas & Electric Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

July 13, 1940. Amendment to counter-praecipe of Columbia Gas & Electric Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

July 16, 1940. Amendment to counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

July 16, 1940. Amendment to counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

[fols. 12-13] [File endorsement omitted]

[fol. 14] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF DELAWARE

In Equity No. 1099

UNITED STATES OF AMERICA, Petitioner,

v.

COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL &
GASOLINE CORPORATION, George H. Howard, Phillip G.
Gossler, Charles A. Munroe, Thomas R. Weymouth,
Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay,
and John H. Hillman, Jr., Defendants

AMENDED AND SUPPLEMENTAL PETITION—Filed October 30,
1935

The United States of America, by John J. Morris, Jr.,
United States Attorney for the District of Delaware, act-
ing under direction of the Attorney General, brings this
proceeding in equity against the defendants above-named,

and for an amended and supplemental petition alleges upon information and belief as follows:

For a First Cause of Action

1. That Columbia Gas & Electric Corporation is a corporation organized and existing under the laws of Delaware.

[fol. 15] 2. That Columbia Oil & Gasoline Corporation is a corporation organized and existing under the laws of Delaware.

3. That each of said corporate defendants has a principal office and place of business at 61 Broadway, in the City of New York, New York.

4. That George H. Howard is a resident of the City of New York, New York.

5. That Phillip G. Gossler is a resident of the City of New York, New York.

6. That Charles A. Munroe is a resident of the City of Chicago, Illinois.

7. That Thomas R. Weymouth is a resident of the City of Pittsburgh, Pennsylvania.

8. That Thomas B. Gregory is a resident of the City of Pittsburgh, Pennsylvania.

9. That Edward Reynolds, Jr., is a resident of the City of New York, New York.

10. That Burt R. Bay is a resident of the City of Kansas City, Missouri.

11. That John H. Hillman, Jr., is a resident of the City of Pittsburgh, Pennsylvania.

12. That the above-named individual defendants are citizens of the United States and have been either voting trustees of the common stock of Panhandle Eastern Pipe Line Company (a corporation of the State of Delaware), or officers and directors of said corporation, and the individual defendants except Burt R. Bay and John H. Hillman, Jr., have been officers and directors of Columbia Gas & Electric [fol. 16] Corporation and Columbia Oil and Gasoline Corporation.

13. That Columbia Gas & Electric Corporation is a holding company owning, controlling, and dominating the operations of more than 70 subsidiaries. These subsidiaries are divided into 7 groups, as follows:

The Charleston (West Virginia) group which produces, transports, and distributes natural gas in 79 cities and towns in West Virginia and Ohio.

The Cincinnati (Ohio) group which produces, transports, and distributes electricity, natural gas, and manufactured gas in 142 cities and towns in Ohio and 17 cities and towns in Kentucky.

The Columbus (Ohio) group which produces, transports, and sells natural gas both at wholesale and retail in 277 cities and towns in the States of Ohio and Indiana.

The Dayton (Ohio) group which produces, transports, and distributes electricity and natural gas in 127 cities and towns in the State of Ohio.

The Pittsburgh (Pennsylvania) group which produces, transports, and distributes, both at wholesale and retail, natural gas in 256 cities and towns in the States of Pennsylvania, West Virginia, and Ohio.

The Binghamton (New York) group which produces, transports, and distributes artificial, mixed, and natural gas in Binghamton, New York, and several neighboring communities.

[fol. 17] The Seaboard group, the corporate members of which each operate a section of the gas transmission pipe line running from Boldman, Kentucky, through Kentucky, West Virginia, Virginia, and Maryland to the Maryland-Pennsylvania State Line near Conowingo, Maryland.

Columbia Gas and Electric Corporation has conducted the affairs, business, and commerce of said subsidiary corporations as one enterprise, and it and said subsidiaries are sometimes hereinafter referred to as the Columbia System.

14. That Columbia Oil and Gasoline Corporation is a corporation of the State of Delaware, organized by Columbia Gas and Electric Corporation to hold the oil, gasoline, and gas-producing properties of the Columbia System. All of its first preferred stock and all of its second preferred stock is owned by Columbia Gas and Electric Corporation. All of its common stock has been deposited under a Voting

Trust Agreement and Voting Trust Certificates have been distributed to holders of the common stock of Columbia Gas and Electric Corporation.

15. That the field of operations of the Columbia System, so far as the production, transmission, and distribution of natural gas is concerned, extends from Muncie, in the State of Indiana, through the States of Ohio, Kentucky, West Virginia, and Pennsylvania to Washington, in the District of Columbia, and other cities on the Eastern Seaboard. [fol. 18] Its greatest concentration of operations is in the State of Ohio, in a large portion of which State it has for many years past enjoyed a virtual monopoly in the sales and distribution of natural, mixed, and artificial gas.

16. That Missouri-Kansas Pipe Line Company, hereinafter sometimes referred to as Moka, was organized under the laws of the State of Delaware in 1928 for the purpose of producing, transporting, distributing, and selling natural gas, both at wholesale and retail, in the States of Kansas, Missouri, Illinois, Kentucky, Indiana, Michigan, and Ohio. By 1930 it had acquired vast gas-producing acreage in the Panhandle of Texas and the Hugoton field of Kansas at prices that would have enabled it to market such gas on a favorable competitive basis with any person, firm, or corporation then or now engaged in the sale and distribution of natural gas in said States of Kansas, Missouri, Illinois, Indiana, Kentucky, Michigan, and Ohio.

In 1929 Moka caused the organization of Panhandle Eastern Pipe Line Company under the laws of the State of Delaware and became the owner of the entire capital stock of said corporation. Said Panhandle Eastern Pipe Line Company was organized for the purpose of building and operating a natural-gas pipe line from said gas-producing territories of the Texas Panhandle and Kansas through the States of Oklahoma, Kansas, Missouri, Illinois, and Indiana, up to the City of Indianapolis. It was the intention of Missouri-Kansas Pipe Line Company to purchase a large part of the natural gas so transmitted by said Panhandle Eastern Pipe Line Company for resale in the territories served and to be served by said Missouri-Kansas Pipe Line Company. Plans for the construction of said Panhandle Eastern pipe line included extensions to the City of Detroit, Michigan, and to Dayton and Cincinnati in Ohio, upon its completion to the City of Indianapolis.

17. That since early in June 1930 the defendants have been and now are engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio and to monopolize and attempt to monopolize such trade and commerce in said natural gas in the States of Indiana, Michigan, and Ohio, in violation of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies." The specific purposes and objects of said combination and conspiracy were and are—

To prevent, if possible, the construction of the natural-gas pipe line described in Article 15 hereof, and, failing that, to obtain control of the management and operation of said Panhandle Eastern Pipe Line Company and its subsidiaries, and, having obtained such control, so to conduct its activities and affairs as to (a) prevent said Missouri-Kansas [fol. 20] Pipe Line Company from obtaining its requirements of natural gas from said Panhandle Eastern Pipe Line Company; (b) prevent said Panhandle Eastern Pipe Line Company from making available, either directly or indirectly, its large supplies of natural gas in such manner as to compete with the Columbia System or endanger its actual or contemplated monopoly in the distribution and sale of natural gas in said States of Indiana, Michigan, and Ohio; and finally (c) bring said Panhandle Eastern Pipe Line Company to such a financial condition that the corporate defendants herein might be enabled to acquire the complete domination and ownership of its physical assets and properties, either by foreclosure of the mortgage securing its bonded indebtedness or otherwise, as hereinafter more particularly described.

The defendants herein have carried out, or attempted to carry out, the purposes and objects of said combination and conspiracy in the manner and by the means hereinafter set forth.

18. That on or about June 20, 1930, the defendant Columbia Oil and Gasoline Corporation entered into an agreement with Moka, whereby and whereunder said Columbia Oil & Gasoline Corporation acquired the exclusive right to purchase one-half of the outstanding capital stock of said Panhandle Eastern Pipe Line Company and thereafter to maintain its 50% ownership in said company by having the

[fol. 21] right, likewise exclusive, to purchase one-half of such additional stock or evidences of indebtedness as might be issued by said company. A copy of said agreement is attached hereto as Exhibit A and made a part hereof. Said agreement was by its terms to expire on August 5, 1930. At the request of the corporate defendants herein and as a means of carrying out said combination and conspiracy, said expiration date was twice extended by Mogan for periods of 15 days, and on the final date, to wit, September 5, 1930, the defendant Columbia Oil & Gasoline Corporation refused to go forward with said agreement, with the intent by so doing of forcing Mogan into receivership and thus preventing the completion of said Panhandle Eastern Pipe Line.

19. That on or about September 8, 1930, Mogan entered into a written agreement with Central Public Service Corporation, a corporation of the State of Maryland, whereby and whereunder it was provided that said Central Public Service Corporation would acquire a substantial interest in the Panhandle Eastern Pipe Line Company and would arrange an immediate credit of \$10,000,000 for Mogan. Pursuant to said agreement, Mogan did borrow for its corporate needs the sum of \$3,000,000 and thereby avoided a receivership. A copy of said agreement is hereto attached, marked Exhibit B, and made a part hereof. On September 12, 1930, the individual defendants Gossler, Munroe, and Howard, as a means of carrying out the combination and [fol. 22] conspiracy hereinbefore described, attempted to dissuade said Central Public Service Corporation from going forward with said agreement and from assisting Mogan as therein provided.

20. That having failed in their efforts to persuade Central Public Service Corporation to abandon its agreement with Mogan, the corporate defendants and certain of the individual defendants attempted to, and succeeded in, inducing Mogan to abandon its agreement with Central Public Service Corporation and to enter into a new agreement with the defendant Columbia Oil & Gasoline Corporation and the National City Company of New York. Said new agreement was dated September 17, 1930, and a copy thereof, marked Exhibit C, is hereto attached and made a part hereof. Said agreement contained, among others, the following provisions:

IV. The Pipe Line Company (Mokan) agrees with the parties hereto as follows:

(b) That it will sell and deliver to Columbia 5,000 shares of Common Stock of the Panhandle Company (being one-half of its total stock outstanding) at the price per share determined as provided in Article VIII hereof.

(e) The Pipe Line Company either directly or through its present and/or future subsidiaries will enter into gas purchase contracts with the Panhandle Company upon substantially the following terms:

(1) An excess capacity contract for the purchase up to [fol. 23] 20,000,000 cubic feet of gas per day at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancellation by either party on one year's notice, at the rate of 26½ cents per M cubic feet, deliveries under such contract to be as required by the Pipe Line Company and to aggregate for each year an amount producing at least a 70-per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 20,000,000 cubic feet per day, and after the expiration of one year from the effective date of this firm contract such maximum day shall not exceed the maximum day established during said first year.

(g) The Pipe Line Company will deliver to or on the order of the City Company 200,000 shares of the Pipe Line Company's Common Stock as presently constituted as consideration for the purchase of the Bonds and the arranging of the credits hereinafter in Article VI provided for, and will cause the Panhandle Company to sell and deliver to the City Company the entire issue of \$20,000,000 aggregate [fol. 24] principal amount, of bonds, above described in Schedule A, for the purchase price paid to the Panhandle Company of \$18,000,000, plus accrued interest on the said \$20,000,000, aggregate principal amount, of Bonds from

October 1, 1930, to the date of delivery, and to pay the usual expenses in connection with such financing.

V. Columbia agrees with the parties hereto as follows:

(c) That it will cause the Columbia Gas & Electric Corporation, either directly or through its present and/or future subsidiaries to enter into gas-purchase contracts with the Panhandle Company at or near the Indiana-Illinois state line upon substantially the following terms:

(1) An excess-capacity contract for the purchase up to 20,000,000 cubic feet of gas per day at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess-capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancellation by either party on one year's notice, at the rate of 26½ cents per M cubic feet, deliveries under such contract to be as required by Columbia and to aggregate for each year an amount producing [fol. 25] at least a 70-per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 30,000,000 cubic feet per day, and after the expiration of one year from the effective date of this firm contract such maximum day shall not exceed the maximum day established during said first year.

VI. The City Company agrees with the parties hereto:

(a) That it will purchase the said bonds described in paragraph (f) of Article IV and will pay the purchase price therefor on the Closing Date.

VII. The Pipe Line Company and Columbia agree with the parties hereto:

(a) That they will, subject to the provisions of Article V paragraph (b) hereof, advance to the Panhandle Company in equal amounts all cash in excess of that expended or for which liabilities as determined by Arthur Andersen & Co. existed, on August 31, 1930, and of the proceeds of the

Bond issue, necessary to complete the pipe line under construction from Texas to the Indiana-Illinois state line and take therefor notes and common stock in the ratio of \$90 in notes and \$10 in two shares of common stock as presently constituted, provided that the notes shall be specifically subordinated to the Bonds and shall mature at a date later than the maturity of the Bonds.

(c) That they will cause the Panhandle Company to put the pipe line into commercial operation as soon as practical [fol. 26] after completion and to operate the same at its highest possible efficiency.

XIII. The Pipe Line Company will cause the Panhandle Company to deliver to the City Company a letter signed by the President of the Panhandle Company descriptive of its properties and the project and of the Bonds in reasonable detail and in form satisfactory to the City Company. Columbia will cooperate in the preparation of such letter. From time to time the Pipe Line Company and Columbia will cause the Panhandle Company to furnish the City Company with quarterly statements of operations and balance sheet in reasonable detail.

XIV. If within 15 days after written notice that payment will be required by the Panhandle Company for the completion of its pipe line, either Columbia or the Pipe Line Company shall fail to provide their share of the necessary funds required as provided in Article VII, paragraph (a) or in Article XII hereof, the party not in default may itself provide such funds and shall be entitled to receive from the Panhandle Company therefor the same securities as would have been given to the other party so in default if it had made the advance and the right of the party in default to proceed further with such financing shall terminate.

21. That on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Mokan and the defendant Columbia [fol. 27] Oil & Gasoline Corporation. Said agreement is attached hereto, marked Exhibit D, and made a part hereof. By its terms the parties thereto agreed that the entire outstanding capital stock of Panhandle Eastern Pipe Line Company, owned one-half by Mokan and one-half by the defendant Columbia Oil & Gasoline Corporation, was to be

deposited in a Voting Trust, to be administered by three Voting Trustees, of whom Frank P. Parrish, then president of Mokan, was to be one; the defendant Phillip G. Gossler, then president of the defendant Columbia Gas & Electric Corporation, was to be the second; and the defendant George H. Howard, then president of United Corporation, was to be the third. Said agreement of September 30, 1930, likewise provided that the Board of Directors of Panhandle Eastern Pipe Line Company was forthwith to be reconstituted so as to consist of nine members, four of whom were to be nominated by the defendant Columbia Oil & Gasoline Corporation, four by Mokan, and the remaining or ninth director to be the defendant George H. Howard, or a nominee of said United Corporation. The defendants Gossler and Munroe induced Mokan to accept the defendant Howard as such third voting trustee and ninth director by representing that said Howard would act impartially and in the best interests of Panhandle Eastern Pipe Line Company but the selection of the defendant George H. Howard as the third voting trustee, and the ninth director of Panhandle [fol. 28] Eastern Pipe Line Company, was in reality an act done in furtherance of said combination and conspiracy, since at the time of such selection the said George H. Howard was president of United Corporation, which corporation was and is the largest single stockholder in the defendant Columbia Gas & Electric Corporation, and during the period that said George H. Howard served as said voting trustee and director he acted solely in the interests of the corporate defendants herein and for the single purpose of effecting the objects of said combination and conspiracy.

22. That pursuant to the terms of said agreement of September 17, 1930, the defendant Columbia Oil & Gasoline Corporation purchased one-half of the outstanding capital stock of Panhandle Eastern Pipe Line Company and The National City Company purchased its issue of first-mortgage bonds in the total principal amount of \$20,000,000. Likewise, pursuant to the terms of said agreement, Mokan caused the president of Panhandle Eastern Pipe Line Company to write to The National City Company a letter descriptive of its properties and project and of the bonds, and said National City Company caused to be prepared numerous drafts of a circular offering said bonds for sale to the public. Prior to any public offering, however, and as a means of carrying out the combination and conspiracy hereinbefore de-

scribed, the corporate defendants herein induced said National City Company to sell said entire issue of bonds to the defendant Columbia Oil & Gasoline Corporation, thus enabling it to acquire a first-mortgage lien upon all of the physical assets and properties of said Panhandle Eastern Pipe Line Company.

23. That as soon as the new Board of Directors of Panhandle Eastern Pipe Line Company had been elected, pursuant to the provisions of said agreement of September 30, 1930, the individual defendants P. G. Gossler, George H. Howard, and C. A. Munroe, who, together with Fred W. Crawford and George W. Crawford, both of whom are now deceased, constituted a majority of said Board, caused the election of new officers to manage and operate the affairs of said Panhandle Eastern Pipe Line Company, none of whom, with the exception of the defendant Burt R. Bay, had previously been identified either with Mokon or with Panhandle Eastern Pipe Line Company, and all of whom, including said defendant Burt R. Bay, were and are responsive to the wishes of the other defendants herein in the management of the operations and affairs of said Panhandle Eastern Pipe Line Company.

24. That early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Mokon to contribute additional funds for the completion of said natural-gas pipe line, pursuant to the terms of said agreement of September 17, 1930. For such contributions, Panhandle Eastern Pipe Line Company issued \$9,981,000 of its 6% promissory notes due on October 2, 1950, which notes were specifically subordinated to its first-mortgage bonds, hereinbefore described, and increased its outstanding capital stock from 10,000 shares to 229,800 shares. Of said notes and capital stock, the defendant Columbia Oil & Gasoline Corporation and Mokon each received \$4,495,500 in notes and 114,900 shares of stock for their respective contributions. To acquire its proportionate share of said Panhandle Eastern notes and common stock it was necessary for Mokon to borrow money. Such borrowing was accomplished in the following manner:

Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of \$10 each, all of which said shares were issued to and owned by Mokon in consideration of the

transfer by Mokañ to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company. Panhandle Corporation then issued its 2-year, 6% collateral trust notes, due March 15, 1933, in the total principal amount of \$4,940,000. As collateral for said note issue Mokañ pledged its holdings of said Panhandle Eastern Pipe Line Company notes and guaranteed the payment of said Panhandle Corporation notes. Mokañ likewise issued its own 2-year, 6% collateral trust notes, in the total principal sum of \$1,060,000, which were in turn secured by bonds [fol. 31] of similar principal amount of Kentucky Natural Gas Company (a wholly owned subsidiary of Mokañ) and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation.

The financing described hereinbefore enabled Mokañ to maintain its 50% interest in Panhandle Eastern Pipe Line Company and was accomplished through the defendant J. H. Hillman, Jr., and Dillon, Read & Company, of New York. Prior to the underwriting of said Panhandle Corporation notes and said Mokañ notes, and as a means of carrying out the purposes and objects of said combination and conspiracy, the defendant Phillip G. Gossler attempted to dissuade the defendant Hillman and Dillon, Read & Company from furnishing said financial assistance to Mokañ and thereby enabling it to retain its one-half interest in Panhandle Eastern Pipe Line Company. Subsequent to said financing and during April 1931, the defendant Gossler threatened the said defendant Hillman and said Dillon Read & Company that Panhandle Eastern Pipe Line Company would be managed in such manner that it would become bankrupt and the interests represented by the defendant Hillman and Dillon, Read & Company wiped out, unless they prevailed upon Mokañ and upon its subsidiary, Kentucky Natural Gas Company, to cease their efforts to sell natural gas from said Panhandle Eastern pipe line in Indianapolis, Indiana, and in Detroit, Michigan.

[fol. 32] 25. That in March 1931, and as a means of carrying out the purposes and objects of said combination and conspiracy, the defendants Gossler, Howard, Munroe, and Gregory, who, together with F. W. Crawford, now deceased, constituted a majority of the Board of Directors of Panhandle Eastern Pipe Line Company, caused said Panhandle Eastern Pipe Line Company to take appropriate corporate

action by which the mortgage trust indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which said first-mortgage bonds had been issued, was supplemented and amended so as to provide, in substance, that a failure to pay any installment of interest upon the 6% promissory notes of said Panhandle Eastern Pipe Line Company, hereinbefore described, would constitute an act of default under said mortgage trust indenture and would automatically cause the entire issue of bonds as aforesaid to become in default.

26. That as the construction of said Panhandle Eastern pipe line neared completion, Mokaan demanded its gas-purchase contract from Panhandle Eastern Pipe Line Company, as provided in Article IV (e) of said agreement of September 17, 1930; that said demand was formally presented at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931, and that, in response thereto, said F. W. Crawford, who was then president of Panhandle Eastern Pipe Line Company, and [fol. 33] likewise an officer and director of the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company that it would not sell gas to Mokaan unless such gas would be resold by Mokaan only in southwestern Indiana and south to Nashville, Tennessee, which said statement is incorporated in the minutes of said meeting; that upon the refusal of Mokaan to accept such conditions the resolution calling for the preparation of said gas-purchase contract was laid on the table by the votes of said F. W. Crawford, now deceased, and of the defendants Howard, Munroe, Gregory, and Reynolds, who then constituted a majority of said Board; that subsequent to said meeting of May 26, 1931, and on June 5, 1931, a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corporation to prepare and submit a form of contract for the purchase of gas by Mokaan in accordance with the provisions of said agreement of September 17, 1930; that despite the passage of said resolution and by reason of the acts of the individual defendants, including George H. Howard, who have been officers and directors of Panhandle Eastern Pipe Line Company, in furtherance of said combination and conspiracy, no such gas-purchase contract, or form thereof, has ever

been submitted either to Missouri-Kansas Pipe Line Company or to its receivers, nor has Missouri-Kansas Pipe Line Company or its receivers ever been able to purchase natural [fol. 34] gas in any quantity from said Panhandle Eastern Pipe Line Company. That since the completion of the Panhandle Eastern pipe line, and as a means of effecting the purposes and objects of said combination and conspiracy, the individual defendants, as officers and directors of Panhandle Eastern Pipe Line Company, have failed and neglected to make any effort to force the defendant Columbia Oil & Gasoline Corporation to carry out the provisions of Article V (c) of said agreement of September 17, 1930, looking to the sale of a large quantity of natural gas by Panhandle Eastern Pipe Line Company to the defendant Columbia Gas & Electric Corporation or its subsidiaries; that actual purchases of gas from Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation, and/or its subsidiaries, since the completion of said pipe line in November 1931, have been much less than those provided for in said agreement of September 17, 1930, and greatly less than the amount that could have been purchased and used by the Columbia System.

27. That by reason of its inability to purchase gas for resale from Panhandle Eastern Pipe Line Company, and because of the heavy obligations assumed in raising its share of the funds necessary to complete said Panhandle Eastern pipe line, Mokaan became financially embarrassed, and in March 1932 receivers of its property and assets were appointed by the Court of Chancery of the State of Delaware, [fol. 35] in and for New Castle County. By reason of said receivership, the defendant, J. H. Hillman, Jr., became entitled to nominate the four directors of Panhandle Eastern Pipe Line Company allotted to Mokaan by said agreement of September 30, 1930, and said Hillman and three individuals nominated by him have acted as directors of Panhandle Eastern Pipe Line Company continuously since the appointment of said receivers. That as a result of a default in payment of said Mokaan collateral trust notes described in Article 24 hereof, the said Hillman and his associates in February 1933 became the owners of 750 of the 1,000 outstanding shares of Panhandle Corporation, which corporation owned one-half of the outstanding capital stock of Panhandle Eastern Pipe Line Company, and through his domination of Panhandle Corporation the de-

fendant Hillman has been and now is in position to assist in carrying out the objects and purposes of said combination and conspiracy in the manner hereinafter described. That said Hillman and his nominees upon said Panhandle Eastern Board have acted in concert with the other individual defendants in so conducting the affairs of Panhandle Eastern Pipe Line Company as to carry out the purposes and objects of said combination and conspiracy.

28. That despite the covenant contained in Article VII (c) of said agreement of September 17, 1930, and as a means of carrying out the objects of said combination and conspiracy, the defendants not only attempted to and did prevent Missouri-Kansas Pipe Line Company from selling natural gas from said Panhandle Eastern line in large quantities to industrial users in the City of Indianapolis, Indiana, but also have caused said Panhandle Eastern Pipe Line Company to neglect and reject many opportunities to sell its natural gas to prospective customers in Kansas City and St. Louis, in Detroit, and in smaller communities in the States of Kansas and Missouri.

29. That the acts of the individual defendants, as officers, and a majority of the directors of Panhandle Eastern Pipe Line Company, in refusing to permit said Panhandle Eastern Pipe Line Company to sell any of its natural gas to Mokon, in failing and neglecting to force the defendant Columbia Oil & Gasoline Corporation to cause the defendant Columbia Gas & Electric Corporation and/or its subsidiaries to purchase natural gas from Panhandle Eastern Pipe Line Company in the quantities provided for in said agreement of September 17, 1930, and in preventing Panhandle Eastern Pipe Line Company from taking advantage of its opportunities to sell its natural gas to prospective purchasers in Kansas City, St. Louis, Detroit, and said smaller communities in Kansas and Missouri, brought the financial condition of Panhandle Eastern Pipe Line Company to a place where said company was represented to be unable to [fol. 37] pay the interest installment due on March 2, 1934, on its said 6% promissory notes. Failure to pay said interest installment, or any other installment of interest, on said Panhandle Eastern notes would constitute an act of default under the mortgage trust indenture, as amended, under which the bonds of Panhandle Eastern Pipe Line Company had been issued; that as a result of this situation,

and as a further means of carrying out the purposes of said combination and conspiracy, the individual defendants Hillman, Munroe, Reynolds, Gregory, and Weymouth and the corporate defendant, Columbia Oil & Gasoline Corporation, in March 1934, caused to be presented to said Chancery Court of the State of Delaware a so-called "Plan of Reorganization", which was composed of four documents entitled, respectively:

Letter dated March 14, 1934, of Panhandle Corporation to holders of its 2-year, 6% collateral trust notes.

Offer of Exchange, dated March 12, 1934, of Panhandle Corporation to holders of its 2-year, 6% collateral trust notes.

Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934 of Panhandle Eastern Pipe Line Company.

Agreement, dated March 12, 1934, between Columbia Oil & Gasoline Corporation and Panhandle Corporation.

Copies of said documents in one volume are attached hereto as Exhibit E and made a part hereof. Under said plan holders of Panhandle Corporation notes would have [fol. 38] received modified Panhandle Eastern bonds in the ratio of \$750 of bonds for each \$1,000 of Panhandle Corporation notes. Panhandle Corporation would be dissolved. Panhandle Eastern notes would be reduced from \$9,891,000 face amount to \$1,600,000, and the defendant Columbia Oil & Gasoline Corporation would have acquired the remaining 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company that had been transferred by Moka to Panhandle Corporation, as aforesaid. Said plan was submitted to said Chancery Court of said State of Delaware by reason of the fact that the defendant Columbia Oil & Gasoline Corporation had imposed the following conditions upon its participation therein:

3. Columbia Oil shall not be subject to any obligation or liability hereunder, nor shall any assent which Columbia Oil may give to the Eastern Plan become effective or binding unless—

(a) Panhandle and its stockholders, including the Moka Receivers or their respective successors, such Receivers acting with the approval of the Court of Chancery of the State

of Delaware, shall execute and deliver to Columbia Oil, Columbia Gas & Electric Corporation (a Delaware corporation) and their respective subsidiaries and the past and present officers and directors of said corporation, and to Eastern and its present officers and directors and to such of its past officers and directors as were nominees of Columbia Oil, good and sufficient releases (in form satisfactory to Columbia Oil) of all claims which Panhandle, its stockholders, the Mopan Receivers or Missouri-Kansas Pipe Line Company or any of them may have against said corporations or said officers or directors or any of them (other than claims under or pursuant to this agreement and/or the Eastern Plan);

(b) The Mopan Receivers or their respective successors shall, with the approval of said Court of Chancery enter into an agreement with Columbia Oil, Columbia Gas & Electric Corporation, and Eastern for the cancellation of all rights and obligations of Columbia Oil, Columbia Gas & Electric Corporation, Eastern and Missouri-Kansas Pipe Line Company, and the Mopan Receivers for the purchase or sale of gas or the execution of gas contracts or other rights or obligations, arising under a certain agreement, dated September 17, 1930, between Missouri-Kansas Pipe Line Company, The National City Company of New York, and Columbia Oil (including all modifications of said agreement);

That subsequent to the filing of the petition herein and on or about the 29th day of March 1935 the Chancellor of said Chancery Court of said State of Delaware, in a written opinion, refused to approve said so-called "Plan of Reorganization."

30. That thereafter, to wit, on or about the 19th day of June 1935, during the pendency of this suit, and as a means [fol. 40] of carrying out the objects and purposes of said combination and conspiracy, the defendant Columbia Oil & Gasoline Corporation made a so-called "Offer of Exchange, dated June 19, 1935, of Columbia Oil & Gasoline Corporation to holders of 2-year, 6% collateral trust notes of Panhandle Corporation", and the individual defendants herein Munroe, Hillman, Reynolds, Gregory, and Weymouth, as a majority of the Board of Directors of Panhandle Eastern

Pipe Line Company, caused to be adopted a so-called "Revised Plan of Readjustment of Funded Debt and Capitalization, dated June 19, 1935, of Panhandle Eastern Pipe Line Company." Copies of said "Offer" and "Plan" in one cover are hereto attached as Exhibit F and made a part hereof. Said "Offer" and "Plan" are not dependent upon the consent or approval of said Chancery Court of Delaware, and if carried out will result in ownership by the defendant Columbia Oil & Gasoline Corporation of the entire funded debt of Panhandle Corporation now in default and guaranteed by Mokan, as well as ownership of three-fourths of the outstanding capital stock of said Panhandle Corporation, which company, in turn, owns the 50% interest in Panhandle Eastern Pipe Line Company originally owned by Mokan.

31. That by reason of the continued default in interest payments upon said Panhandle Eastern notes, brought about by the defendants as a means of carrying out said [fol. 41] combination and conspiracy in the manner hereinbefore described, the defendant Columbia Oil & Gasoline Corporation is in a position to, and will, unless restrained by the order of this Honorable Court, either obtain ownership of 100% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and retain ownership of the greater part of the funded debt of said corporation by the carrying into effect of said "Offer" and "Plan" of June 19, 1935, or foreclose on the mortgage trust indenture, as amended, under which said Panhandle Eastern bonds were issued, and thus secure the physical properties and assets of said Panhandle Eastern Pipe Line Company.

32. That the effect of the acts of the defendants in furtherance of said combination and conspiracy, as hereinbefore set forth, has been to exclude said Missouri-Kansas Pipe Line Company from engaging in commerce in natural gas in the States of Michigan and Ohio and in all of the State of Indiana except the southwestern portion thereof, to restrain and prevent said Panhandle Eastern Pipe Line Company from freely and independently engaging in commerce in natural gas in said States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and from competing in any manner with the corporate defendants and their subsidiaries, and from endangering by such free and in-

dividual action the actual and contemplated monopoly in the transmission, distribution, and sale of natural and mixed [fol. 42] gas of said corporate defendants and their subsidiaries in said States of Ohio, Michigan, and Indiana, in violation of said Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies."

For a Second Separate and Distinct Cause of Action

33. Petitioner realleges and incorporates as though fully set forth herein, the allegations contained in paragraphs numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31, and 32 hereof, and further alleges that the effect of the acquisition by the defendant Columbia Oil & Gasoline Corporation of 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company has been to substantially lessen competition between said Columbia Oil & Gasoline Corporation and the companies comprising the Columbia System, on the one hand, and said Panhandle Eastern Pipe Line Company, on the other, to restrain commerce in natural gas in the States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and to tend to create a monopoly in such natural gas in the States of Ohio, Indiana, and Michigan, in violation of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

34. That the acquisition by the defendant, Columbia Oil & Gasoline Corporation, directly or indirectly, of the re-[fol. 43] maining 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company, as contemplated by said "Offer" and "Revised Plan", would be to substantially lessen competition between said Columbia Oil & Gasoline Corporation and the companies comprising the Columbia System, on the one hand, and said Panhandle Eastern Pipe Line Company, on the other, to restrain commerce in natural gas in said States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and to tend to create a monopoly in such natural gas in said States of Indiana, Michigan, and Ohio in violation of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

Prayer

Wherefore petitioner prays:

1. That writs of subpoena issue, directed to each and every defendant, commanding it, or him, to appear herein and answer the allegations contained in this amended and supplemental petition, and to abide by and perform such orders and decrees as the Court may make in the premises.

2. That the Court adjudge and decree that the defendants herein have been and now are engaged in a combination and conspiracy to restrain commerce in natural gas among the several States, and to monopolize, or attempt to monopolize, such commerce in natural gas in the manner and by the means set forth herein, in violation of the Act of Congress [fol. 44] approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies."

3. That the acquisition of 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company be adjudged a violation of the Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

4. That the proposed acquisition by the defendants herein of the remaining 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company, in accordance with the terms and provisions of said "Offer of Exchange" and "Revised Plan" of June 19, 1935, be restrained by order of this Court as a further violation of said Act of Congress approved October 15, 1914, and entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

5. That the defendants, their officers, agents, employees, and each and every one of them, be perpetually enjoined, individually and collectively, from further engaging in the aforesaid conspiracy, or any other of like character or effect, from further employing either, any, or all of the above-described means for effectuating said conspiracy, from further exercising any dominion or control over Panhandle Eastern Pipe Line Company, and from further restraining

or interfering in any manner with the free and independent [fol. 45] action of Panhandle Eastern Pipe Line Company in the production, transportation, or sale and delivery of natural gas to any person or corporation, or in and to any section or community in the United States.

6. That Columbia Oil & Gasoline Corporation be required to divest itself of all of the stock and bonds of Panhandle Eastern Pipe Line Company now owned and hereafter acquired by it.

7. That the defendants, their officers, agents, employees, and all persons and corporations acting on their behalf, be enjoined, restrained, and prohibited from acquiring, receiving, holding, voting, or in any manner acting as the owners of the whole or any part of the stock, bonds, other share capital, property, or assets of Panhandle Eastern Pipe Line Company.

8. That the petitioner have such other and further relief as may to the Court seem proper.

John J. Morris, Jr., United States Attorney for the District of Delaware; Stanley Reed, Acting Attorney General of the United States; John Dickinson, Assistant Attorney General; Carl McFarland, Special Assistant to the Attorney General; Berkeley W. Henderson, Special Assistant to the Attorney General; Morris R. Clark, Special Assistant to the Attorney General.

[fol. 46]

EXHIBIT "A" TO PETITION

Agreement, dated June 20, 1930, between Missouri-Kansas Pipe Line Company, a Delaware Corporation (hereinafter called the Pipe Line Company), and Columbia Oil and Gasoline Corporation, a Delaware Corporation (hereinafter called Columbia).

The Pipe Line Company makes the following representations as to its property and business on the faith of which Columbia has entered into this Agreement.

1. The Pipe Line Company is a corporation validly organized and existing under the laws of Delaware with an authorized capital stock of 5,000,000 shares of Common

Stock of the par value of \$5 each, and 5,000,000 shares of Class B stock of the par value of \$1 each. Of said stock, 1,627,500 shares of Common Stock and no more, are issued. A statement showing the exact number of shares of common stock presently outstanding will be furnished by the Pipe Line Company to Columbia within 15 days after the execution of this Agreement. 1,598,918 shares of class B Stock have been issued and are deposited under a voting-trust agreement. Rights to purchase voting-trust certificates to be issued pursuant to such voting-trust agreement, have been afforded to holders of the common stock, share for share. Such rights expire June 25, 1930. The Pipe Line Company has no preferred or other class of stock except as above stated and no funded indebtedness.

[fol. 47] 2. Attached hereto as Schedule A is a consolidated balance sheet as of March 31, 1930, of the Pipe Line Company and its subsidiaries, except Panhandle Eastern Pipe Line Company (hereinafter called the Panhandle Company), which correctly sets forth its assets and liabilities as of that date. Correct profit and loss statements by years of the operations of the Pipe Line Company from the date of its organization to said date of March 31, 1930, will be furnished by the Pipe Line Company to Columbia within 15 days of the execution hereof. Any changes of substance in said balance sheet since that date, other than changes incident to the current course of business, will be notified by the Pipe Line Company to Columbia likewise within 15 days from the execution hereof.

3. Panhandle-Eastern Pipe Line Company (hereinafter called the Panhandle Company) is a corporation of the State of Delaware, all the capital stock and all the indebtedness of which, except indebtedness for current construction and material costs, gas leases, and the like, are owned by the Pipe Line Company or which the Pipe Line Company will take immediate steps to acquire. The Pipe Line Company will also take immediate steps to cancel any options or contracts which may exist with respect to such stock. Attached hereto as Schedule B is a copy of the balance sheet of the Panhandle Company as of April 30, 1930, which correctly sets forth its assets and liabilities as of that date. Any substantial changes in said balance sheet since said date other than changes incident to the current course of business will be notified by the Pipe Line Company to Columbia likewise.

within 15 days from the execution hereof. The total amount [fol. 48] of stock of the Panhandle Company authorized is 15,000 shares of preferred stock having a par value of \$100.00 per share and 10,000 shares of common stock without par value. All of the shares of preferred stock are held in the Treasury of the Panhandle Company and will not be reissued. There are outstanding, as of the present date, 10,000 shares of the common stock of the Panhandle Company; and all the outstanding indebtedness of the Panhandle Company, except indebtedness for current construction and material costs, gas leases, and the like, is owned by the Pipe Line Company and represents in general advances made to the Panhandle Company by the Pipe Line Company for the acquisition and construction of its properties. The exact amount of the indebtedness so owned by the Pipe Line Company will be furnished to Columbia by the Pipe Line Company within 15 days after the execution of this agreement.

4. In addition to owning the stock and indebtedness of the Panhandle Company, the Pipe Line Company also owns all the stock and indebtedness (except indebtedness for current operations) of the following subsidiary companies, as follows:

Name of corporation	State of incorporation	Amount of stock owned
Kentucky Nat'l Gas Co.....	Delaware....	1,000 shs. pfd.
Missouri-Kansas Gas Co.....	"	511,000 " com.
Central States Gas Utilities Co.....	Illinois.....	1,000 " com.
Indiana-Kentucky Nat'l Gas Co.....	Indiana.....	100 " "
		1,000 " "

A statement showing the amount of indebtedness of the above-named companies to the Pipe Line Company will be furnished by the Pipe Line Company to Columbia within [fol. 49] 15 days after the execution of this agreement. The Pipe Line Company also owns less than all of the outstanding stock of the following companies:

Name of corporation	State of incorporation	Amount of stock owned
Staves Drilling Company.....	Illinois.....	510 shs. common (51%).
J. D. Judd & Company.....	Delaware....	255 " " (51%).
Shale Gas Corporation.....	"	510 " " (51%).

A statement showing the amount of indebtedness of the above-named companies to the Pipe Line Company will be furnished by the Pipe Line Company to Columbia within 15 days after the execution of this agreement. Copies of the

balance sheets of the above companies as of the latest available date, and profit-and-loss statements for the period that they have respectively operated as subsidiaries of the Pipe Line Company, will be furnished by the Pipe Line Company to Columbia within 15 days from the execution hereof and will be correct.

5. The Panhandle Company has been formed for the purpose of building a pipe line from the Panhandle in Texas to the City of Indianapolis, Indiana, through the States of Texas, Oklahoma, Kansas, Missouri, Illinois, and Indiana, with lateral lines, according to the route shown on the map attached hereto as Schedule C. It, or its wholly owned subsidiary, Texas Interstate Pipe Line Company, has acquired the right-of-way for a substantial part, approximately 350 out of a total of approximately 930 miles, of said pipe line. It has contracted for the construction of this pipe line in sections with the following respective contractors:

[fol. 50] Oklahoma Contracting Company, Dallas, Texas: From Moore County to a point near the Eastern Line of Harvey County, Kansas, approximately 310 miles.

Williams Brothers, Incorporated, Tulsa, Oklahoma: From Harvey County, Kansas, to a point of intersection with the Missouri-Kansas Pipe Line Co. 10-inch line near Paola, Kansas, approximately 150 miles.

J. J. Connor & Son Construction Company, Kansas City, Mo.: From the point of intersection above named to the Missouri River crossing near Booneville, Missouri, approximately 103 miles.

Williams Brothers, Incorporated, Tulsa, Oklahoma: From the Missouri River crossing near Booneville, Missouri, to Indianapolis, approximately 369 miles.

Said pipe line will be constructed of 22" pipe from the point of beginning in Moore County, Texas, to Liberal, Kansas, of 24" pipe from Liberal, Kansas, to a point near the Missouri State line, of 22" pipe from the Missouri State line to Peoria branch, and of 20" pipe from the Peoria branch to Indianapolis. Copies of the contracts with the contractors referred to will be furnished by the Pipe Line Company to Columbia within 15 days from the execution hereof. There will be furnished also, at the same time, an estimate of the total cost of the said Pipe Line project, including gas lands purchased in connection therewith, and

all appurtenances to said pipe line, such as compressors, telephone lines, etc., together with a statement of the amounts expended to date in such connection.

[fol. 51] 6. In addition to the pipe-line property above mentioned, the Panhandle Company, through its said subsidiary, Texas Interstate Pipe Line Company, owns approximately 138,518 acres of natural gas producing territory located in the following states and fields:

State	Field	Acreage
Texas	Panhandle	59,018
Oklahoma	Oklahoma Panhandle (Texas Co.)	44,900
Southwestern Kansas	Hougaton	34,607
		<hr/> 138,525

Such ownership is by lease on Mid-Continent 88 form on customary terms for the territory in question.

7. The Pipe Line Company itself, or through other subsidiary companies, owns natural gas lands by lease or Mid-Continent form 88 or under gas purchase contracts, located in the following states and fields:

State	Field	Acreage
Kansas	Miami, Linn, Anderson Counties	70,949
Kansas	Chanute District	20,794
Missouri	Jackson County	37,346
Illinois	Jacksonville	2,213
Kentucky	Irvine and western Kentucky	104,597
Total		<hr/> 235,899

Of the above acreage approximately 150643 is held under lease as above stated and 85253 is controlled under gas purchase contracts. The Pipe Line Company will furnish to Columbia within 15 days after the execution hereof a copy of a report by Brokaw, Dixon, Garner, and McKee covering [fol. 52] a portion of the acreage described in the foregoing paragraph 6; together with a statement showing the acreage of Texas Interstate Pipe Line Company and acreage owned or controlled by Missouri-Kansas Pipe Line Company not included in such report, and on which no independent engineering estimate of reserves has been made.

8. The Pipe Line Company also, either directly or through other subsidiary companies, owns a system of pipe lines for the supplying of gas to the following cities and towns where it has contracts to supply natural gas to the companies owning the distributing properties therein, or distributes natu-

ral gas therein as follows: Kansas City, Mo. (wholesale delivery to American Pipe Line Co.); Independence, Mo.; Belton, Mo.; Loose Springs, Mo.; Morton City, Mo.; Raytown, Mo.; Paola, Kansas; Osawatomie, Kans.; Rantoul, Kans.; Imes, Kans.; Greely, Kans.; Lewisburg, Kans.; Lane, Kans.; Chanute, Kans.; Jacksonville, Ill.; Owensboro, Ky.; Henderson, Ky. (Industrial contract); Franklin, Ky.; Cloverport, Ky.

In the following communities franchises have been taken or contracts made, pipe lines being under construction: Bowling Green, Ky.; Russellville, Ky.; Hopkinsville, Ky.; Greenville, Ky.; Hawesville, Ky.; Whitesville, Ky.; Madisonville, Ky.; Oakland, Ky.; Mumfordsville, Ky.; Clarkesville, Tenn.; Tell City, Ind.; Cannelton, Ind.; Troy, Ind.; Rockport, Ind.

A statement of all other contracts for the sale of gas, which have been entered into by the Pipe Line Company or of any of its subsidiaries, will be furnished by the Pipe Line Company to Columbia within 15 days of the execution hereof.

[fol. 53] Columbia makes the following representations as to its property and business on the faith of which the Pipe Line Company has entered into this agreement:

Columbia is a corporation validly organized and existing under the laws of Delaware, with an authorized capital stock of 337,500 shares of \$6 First Preferred Stock, 337,500 shares of \$6 Second Preferred Stock, and 2,500,000 shares of Common Stock. All of said First Preferred Stock and Second Preferred Stock is outstanding and owned by Columbia Gas & Electric Corporation, a Delaware Corporation. Approximately 2,340,000 shares of said Common Stock, being its entire common stock issued, represented by voting-trust certificates, issued under a voting-trust agreement constituting George W. Crawford and Philip G. Gossler Voting Trustees of such stock, will be issued to the holders of common stock of Columbia Gas & Electric Corporation on June 30, 1930, in accordance with the declaration of a dividend heretofore declared by Columbia Gas & Electric Corporation. The properties of Columbia consist, in brief, of the stocks of four subsidiaries owning and operating the oil and gasoline properties owned as of January 1, 1930, by the subsidiaries of Columbia Gas & Electric Corporation. A balance sheet of Columbia, and such profit-and-loss account as

may be available, will be furnished by Columbia to the Pipe Line Company within 15 days from the date of execution hereof.

For Valuable Consideration it is hereby agreed between the Pipe Line Company and Columbia as follows:

First. The Pipe Line Company will assign and convey, or cause to be assigned and conveyed, to the Panhandle Company (a) all of the above gas lands of the Pipe Line Company or its other subsidiaries referred to in paragraph 7 above, such conveyance to be made either directly or through the stocks of the owning companies, and (b) all of the above shares of stock and indebtedness of the subsidiary companies other than the Panhandle Company referred to in paragraph 4 above, together with any indebtedness of Texas Inter-State Pipe Line Company, and (c) all of the pipe lines, distribution systems, and contracts referred to in paragraph 8 above, such assignment to be made either directly or through the stocks of the subsidiary companies, in consideration of the issue to the Pipe Line Company by the Panhandle Company of notes in an amount which shall be determined by the same standards as the purchase price to be paid by Columbia is determined pursuant to Article Second hereof.

Second. Such conveyance to the Panhandle Company by the Pipe Line Company having been accomplished and the total outstanding stock of the Panhandle Company having been acquired by the Pipe Line Company, the Pipe Line Company will sell to Columbia and Columbia will purchase, subject to the provisions of this contract, one-half of the total amount of stock and debt of the Panhandle Company so owned by the Pipe Line Company, the purpose being that at the conclusion of this transaction the Pipe Line Company and Columbia shall each own one-half of the total outstanding stock of the Panhandle Company and one-half of its total outstanding debt. The purchase price payable by Columbia shall be a cash sum to be agreed upon between the [fol. 55] Pipe Line Company and Columbia and to consist of, in the case of the properties owned by the Panhandle Company and its subsidiaries, cost including overhead, cost incidental to obtaining contracts and the like, and also cash on hand and other current assets of itself and subsidiaries less all current liabilities, and in the case of property of the Pipe Line Company and its other subsidiaries to be trans-

ferred to the Panhandle Company, upon the above basis plus a reasonable allowance for enhanced value resulting from the development markets.

The Pipe Line Company will notify Columbia, within 15 days from the execution hereof, of its computation of such purchase price with necessary details so as to show the manner of computation.

Third. Delivery of said stock and the transfer of said indebtedness so to be purchased by Columbia shall be made by the Pipe Line Company to Columbia at the office of the Columbia Gas & Electric Corporation, 61 Broadway, New York City, on August 5, 1930, and payment shall be made against the receipt thereof, subject to the provisions of this contract.

The net asset position of the Pipe Line Company and of the subsidiary companies shall not be less favorable at the date of closing than as shown by the balance sheets thereof hereinabove referred to; and the capitalization of said subsidiary companies as of said date shall be unchanged from that so stated except as shall be required in the case of the Panhandle Company by the provisions of this agreement. No dividend or other distribution of assets shall be made by any of the above subsidiary companies pending the closing of this contract.

[fol. 56] Fourth. It being intended that, on the consummation of the above sale, the cost of the construction of the part of said pipe line of the Panhandle Company above referred to remaining unfinished and the cost of the completion of any project of the Pipe Line Company or the other subsidiaries now in course of construction shall thereafter be borne by the Pipe Line Company and Columbia in equal shares, Columbia and the Pipe Line Company agree that when the purchase and sale of securities above mentioned shall have been consummated, the Pipe Line Company and Columbia will thereafter share each one-half of the cost of the expense of the completion of said pipe-line system to Indianapolis and one-half the cost of the completion of said other unfinished projects, such total cost, however, not to exceed \$45,000,000 less the amount expended on date of closing in respect of the pipe-line system from Texas Panhandle to Indianapolis as notified to Columbia by the Pipe Line Company pursuant to the provisions of Paragraph 5. Whenever any payment is due for such con-

struction, the Pipe Line Company and Columbia will each promptly advance to the Panhandle Company one-half thereof, receiving therefor indebtedness and Common Stock of the Panhandle Company to the face of the advance in the proportion of \$90 debt and two shares of stock for every One Hundred Dollars (\$100) advanced; provided, however, that upon the last advance to be made by the parties hereto for the completion of said pipe line the proportion of stock and indebtedness received by such parties shall be such that there shall remain no authorized stock of the Panhandle Company not issued and outstanding. If within [fol. 57] 15 days after written notice that such payment will be required by the Panhandle Company, either Columbia or the Pipe Line Company shall fail to provide the necessary funds required for their aforesaid obligation, the other party hereto may itself provide such funds and shall be entitled to receive from the Panhandle Company therefor the same amount of indebtedness and stock of the Panhandle Company as would have been given to the other party to this agreement so in default if it had made the advance and the right of the party in default to receive such securities shall terminate. An appropriate contract or contracts will be entered into between the Panhandle Company and the parties hereto for this purpose.

Fifth. At the conclusion of the construction of the pipe line to Indianapolis, the Panhandle Company will enter into an agreement with Columbia Gas & Electric Corporation, a corporation of the State of Delaware, for the sale of gas to it or one or more of its subsidiary companies as it may elect, at equitable terms which will not deprive the stockholders of the Panhandle Company of a fair return, to be agreed upon between the parties hereto as hereinafter provided.

Sixth. Coincident with the delivery of and payment for the stock and debt of the Panhandle Company, provision will be made for enlarging the Board of Directors of the Panhandle Company to a total directorate of nine, of whom five shall be nominees of Columbia and four shall be nominees of the Pipe Line Company. Provision shall be made that in subsequent years such division of the Board between the nominees of Columbia and the nominees of the Pipe Line [fol. 58] Company shall be continued in a manner satisfactory to counsel for both parties.

Seventh. After the pipe line has been completed in accordance with the foregoing provisions or the expenditure of the maximum amount of cost hereinbefore in Article Fourth provided has been made, whichever shall be prior, the parties shall be under no obligation to share in any further capital expenditures of the Panhandle Company, and any further capital expenditures by such Company shall be financed by the Panhandle Company itself. Provision will be made in the recapitalization of the Panhandle Company prior to the purchase by Columbia hereinbefore provided for, so that, on said completion of the pipe line, or expenditure of said maximum cost, there will be no authorized but unissued voting stock of the Panhandle Company.

Eighth. The obligations of Columbia to make the above purchase are subject to the following:

(a) all the above representations of the Pipe Line Company contained in paragraphs 1 to 8 shall have been substantiated to the satisfaction of Columbia and all the obligations of the Pipe Line Company hereinabove set forth, to be performed prior to the consummation of the purchase, shall have been performed;

(b) counsel for Columbia shall be satisfied that the Pipe Line Company, the Panhandle Company, and the other above-named subsidiaries of the Pipe Line Company are validly incorporated and that their stock and securities are duly and legally issued; and that they have good title free from incumbrances to the properties, rights, franchises, and contracts which they are stated to own or operate by [fol. 59] the foregoing provisions of this Agreement and, in general, that all other legal requirements in the premise have been met;

(c) Columbia and the Pipe Line Company shall have agreed as to the terms of the contract referred to in Article Fifth above, which is to be executed on the completion of the pipe line for the sale of gas to Columbia Gas & Electric Corporation, and such contract shall have been confirmed by the Panhandle Company to the Columbia Gas & Electric Corporation, or otherwise as counsel for Columbia may advise, so that Columbia Gas & Electric Corporation may be assured of having the rights set out in said contract on the completion of the pipe lines;

(d) Columbia shall be satisfied that the contracts of the Pipe Line Company and its subsidiaries for the purchase and sale of gas and the contracts which Columbia believes the Pipe Line Company and its subsidiaries can obtain will be on sufficiently favorable terms to enable the Panhandle Company to carry on its operations at a profit;

(e) Columbia shall be satisfied that the gas reserves of the Pipe Line Company and its subsidiaries are sufficient to enable the Panhandle Company, after the acquisitions above set forth have been effected, to supply the proposed markets, as well as the proposed contract with the Columbia Gas & Electric Corporation, for a period sufficiently long to justify the expense of building the proposed pipe line;

Should Columbia determine that any of the foregoing conditions of this Article Eight are not fulfilled, it may give written notice thereof, to the Pipe Line Company by letter [fol. 60] addressed to Missouri-Kansas Pipe Line Company, 10 South LaSalle Street, Chicago, and thereafter all obligations of either party to the other under this contract shall be terminated without liability of one to the other.

Ninth. Between the date of the signing of this contract and the above date of August 5, 1930, set for the closing, Columbia shall have the right to examine all books, accounts, contracts, records, etc., of the Pipe Line Company and its subsidiaries, as well as all the properties thereof and test and verify the gas production of any said properties.

Tenth. Columbia may assign its rights and obligations under this contract to Columbia Gas & Electric Corporation, or to any subsidiary of Columbia or of Columbia Gas & Electric Corporation, but in the event of any said assignment the parent company of such subsidiary will guarantee such subsidiary's obligations under this agreement.

Eleventh. The obligations of the Pipe Line Company under this agreement are subject to the following:

(a) All of the representations of Columbia contained in the foregoing shall have been substantiated to the satisfaction of the Pipe Line Company and all of the obligations of Columbia hereinabove set forth as precedent to any performance by the Pipe Line Company shall have been performed.

(b) Counsel for the Pipe Line Company shall be satisfied that Columbia is validly incorporated and that its stock and securities are duly and legally issued.

(c) The Pipe Line Company and Columbia shall have agreed as to the terms of the contract referred to in Article Fifth above, which is to be executed on the completion of the pipe line for the sale of gas to the Columbia Gas & [fol. 61] Electric Corporation, and such contract shall have been confirmed by Columbia Gas & Electric Corporation to the Pipe Line Company, or otherwise as counsel for the Pipe Line Company may advise, so that the Pipe Line Company may be assured that Panhandle Eastern shall have the rights set out in said contract on the completion of the pipe line. Should the Pipe Line Company determine that any of the foregoing conditions of this article Eleventh are not fulfilled, it may give written notice thereof to Columbia by letter addressed to Columbia Oil & Gasoline Corporation, 61 Broadway, New York, and thereafter all obligations of either party to the other under this contract shall be terminated without liability of one to the other.

Twelfth. The obligations of the Pipe Line Company and Columbia under this Agreement shall in each case be subject to ratification of this Agreement by their respective boards of directors and in any case where such approval is legally necessary to the approval of their respective stockholders to the extent necessary.

In witness whereof, the parties have hereto caused their names to be subscribed by their respective corporate officers the day and year first above stated.

Missouri-Kansas Pipe Line Company, by Frank P. Parish, President. Columbia Oil and Gasoline Corporation, by E. Reynolds, Jr., Vice President.

[fol. 62]

EXHIBIT "B" TO PETITION

Agreement dated September 8, 1930, between Central Public Service Corporation, a Maryland corporation, hereinafter sometimes referred to as Central Company, and Missouri-Kansas Pipe Line Company, a Delaware corporation, hereinafter sometimes referred to as Missouri Company.

Missouri Company represents—

(a) that the pro forma consolidated balance sheet of Missouri Company and its subsidiaries, attached hereto as Exhibit A, dated June 30, 1930, states substantially the condition of Missouri Company and its subsidiaries as of that date and that no changes have occurred or will occur in such condition since that date to the closing date except in the ordinary course of the business, which shall not include dealing in securities, and except as noted in Exhibit B, nor will any dividends other than stock dividends be declared; and that Missouri Company and its subsidiaries own and will own at closing date, the plants, properties, contracts, leases, and franchises, etc., constituting the pipe-line gas producing and distribution system mentioned or reflected in said balance sheet and the certificate made part thereof.

(b) that the statement attached hereto, marked, "Exhibit B", is a substantially accurate statement of the liabilities of the Missouri Company and its subsidiaries as of this date and its best estimate of its cash requirements up to October 1, 1930, and a substantially accurate statement of any contract commitments for the payment of money of [fol. 63] the Missouri Company or its subsidiaries not appearing upon said balance sheet, and that the Missouri Company and its subsidiaries have no substantial liabilities, contingent or otherwise, other than those appearing upon the said balance sheet and the said statement marked "Exhibit B."

(c) That it has expended in cash upon its properties or upon those of its subsidiaries, the stock and securities of which are to be transferred hereunder, not less than \$15,000,000, which sum represents the net amount of such expenditures after deducting any debt or encumbrances incurred on account of such properties, and that such expenditures represent actual assets.

(d) that it or its subsidiaries have contracts for the sale of gas, executed or under negotiation, to be owned or controlled by the Panhandle Company, which in the opinion of competent independent engineers will earn during the first year of operation of the pipe line now under construction by Panhandle Eastern Pipe Line Company; hereinafter referred to, not less than \$4,000,000, net. Attached hereto is copy of letter from Brokaw, Dixon, Garner & McKee, containing the opinion above referred to.

(e) that it or its subsidiaries own natural-gas-producing acreage in Kansas, Oklahoma, Kentucky, Missouri, and Texas by lease on customary terms for the territory in question, or under gas-purchase contracts in customary form, which, or the control of which, will be owned or held by the Panhandle Company sufficient to establish a reserve of not less than 1,500,000,000,000 cubic feet.

(f) that the titles to all the properties, contracts, and franchises owned by it and its subsidiaries and to be owned [fol. 64] or controlled by the Panhandle Company are good and sufficient, are assignable and transferable, and subject to no liens except as reflected in the balance sheet hereto attached; that said Panhandle Eastern Pipe Line Company or its subsidiaries, upon the consummation of this agreement, will have all necessary powers and rights, including the right to eminent domain for rights-of-way for pipe-line construction and the approval and consents of all Governmental bodies requisite to operate their properties as then existing.

(g) that the Panhandle Eastern Pipe Line Company, hereinafter sometimes referred to as Panhandle Company, is a duly organized corporation under the laws of the State of Delaware, with power to do business in the States where it is conducting business, and that its total outstanding stock, namely, 10,000 shares of no par common, and all of its funded indebtedness, is owned by the Missouri-Kansas Pipe Line Company, and that the capital stock so outstanding of said Company is legally issued and outstanding, fully paid and non-assessable.

The Central Company represents that the attached balance sheet as of July 31, 1930, marked "Exhibit C," shows substantially the present condition of the Central Company as of the date thereof, and that there have been no substantial changes therein to date except in the ordinary course of business, and that it is a corporation legally organized and existing under the laws of the State of Maryland with outstanding capital stock and securities as reflected in said balance sheet.

[fol. 65]

Agreements

1. The Missouri Company will transfer and vest in the Panhandle Company all of its properties, rights, and assets of every nature whatsoever owned as of the date hereof, or

to which the Missouri Company has any right, by good and sufficient instruments of transfer, except—

(a) 10,000 shares of the common capital stock of no par value of said Panhandle Company; and

(b) assets specified in Exhibit D; and the Missouri Company further agrees to surrender to said Panhandle Company for cancellation all notes and indebtedness of said Panhandle Company owned by the Missouri Company as of the date of closing hereafter referred to. Said transfer shall be subject to, and the Panhandle Company shall assume and pay, all of the liabilities of the Missouri Company of the character described in Exhibit D hereto attached.

In consideration of the transfers aforesaid, the Panhandle Company will issue and deliver to the Missouri Company 93,750 shares of preferred stock of Panhandle Company of the character hereinafter described, and \$9,375,000 in principal amount of the notes of the Panhandle Company of the character hereinafter described.

2. The Central Company agrees to issue and deliver to the Panhandle Company its notes of the character hereinafter described, in the principal amount of \$18,657,500, and in consideration thereof the Panhandle Company will issue and deliver to the Central Company \$18,750,000 in principal amount of its notes of the same character as provided for in paragraph 1 above.

[fol. 66] 3. The Missouri Company will transfer and deliver to the Central Company certificates representing 5,100 shares of the common capital stock of the Panhandle Company (in any event 51% of the amount of said common stock outstanding on the date of closing) and 46,875 shares of the preferred stock of the Panhandle Company out of the 93,750 shares to be issued to the Missouri Company, as provided in paragraph 1 hereof.

The Central Company will transfer and deliver to the Missouri Company \$4,687,500 principal amount out of \$18,750,000 principal amount of notes of the Panhandle Company to be issued and delivered to it by the Panhandle Company pursuant to the provisions of paragraph 2 hereof.

4. The notes of the Panhandle Company above referred to shall be Twenty-year notes dated September 1, 1930, bearing interest at the rate of 6% per annum, and shall be con-

vertible after January 1, 1932, in whole or in part by 1st, at the option of the Panhandle Company into the preferred stock of the Panhandle Company of the character hereinafter described, on the basis of one share of such preferred stock for each \$100.00, principal amount of such notes.

The notes of the Central Company above referred to shall be Twenty-year notes dated September 1, 1930, bearing interest at the rate of 6% per annum, and shall be convertible in whole or in part at the option of the Central Company into the preferred stock of the Central Company, of the character hereinafter described, on the basis of one share of such preferred stock for each \$100.00, principal amount of such notes, the right of the Central Company to require such conversion, however, and to issue its preferred stock [fol. 67] to effect such conversion shall accrue only when the net consolidated earnings of the Central Company and its subsidiary corporations for a period of twelve consecutive calendar months during the fifteen consecutive calendar months preceding the calendar month in which the additional shares shall be issued shall be equal to at least two and one-half times the actual dividend requirements on all of the preferred stock of the Central Company at the time outstanding and the additional shares so to be issued. Such net consolidated earnings shall be ascertained and calculated in the manner provided in the charter of the Central Company now in effect.

The preferred stock of Panhandle Company above referred to shall be part of an authorized issue of 500,000 shares of preferred stock of the Panhandle Company, issuable in series, with such preferences, terms, and provisions as shall be determined by the Board of Directors of the Panhandle Company, provided that said preferred stock to be received by the Missouri Company and the Central Company and into which the notes of the Panhandle Company above referred to may be converted, shall be entitled to preferred dividends at the rate of \$6.00 per annum, to be cumulative only after January 1, 1932, but shall otherwise have equal preference as to dividends (except as the amount thereof) and assets as the other series of said preferred stock.

The preferred stock of Central Company shall be the \$6.00 preferred stock now provided for under the charter of Central Company. The trust indentures under which the [fol. 68] notes of the Panhandle Company and of the Cen-

tral Company above referred to shall be issued shall contain the usual and customary provisions relating to notes of this character and shall be in such form as shall be approved by counsel for both parties, provided that the indenture under which the notes of Central Company shall be issued shall contain no more burdensome restrictions on the Company than are contained in the indenture of Central Public Service Corporation under which are issued its \$25,000,000 debentures. All legalities in connection with the issue of said notes and preferred stock of the Panhandle Company and of the Central Company shall be subject to the approval of counsel for both parties hereto.

5. The Missouri Company agrees to cause Panhandle Company to take all action necessary to fully carry out the terms and provisions of this agreement and to cause such modifications to be made in the charter and bylaws of the Panhandle Company as may be necessary to comply with the provisions of this agreement and to provide for a Board of nine Directors Missouri Company agrees on the closing date to procure the resignation of all of the Directors of the Panhandle Company and to cause to be elected as Directors of said Company five persons to be nominated by the Central Company and four persons to be nominated by the Missouri Company. Adequate provision will be made to be determined by counsel for both parties, to the end that all contracts of importance between Panhandle Company and Central Company or any subsidiary or affiliated companies thereof, shall be subject to the approval of two-thirds ($\frac{2}{3}$) of the Board of Directors of Panhandle Company.

[fol. 69] 6. Anything hereinbefore to the contrary notwithstanding, in the event that the net amount which the Missouri Company has expended upon its properties as provided in paragraph (c) above, plus the amount of cash, if any, in excess of \$500,000.00 to be retained by the Missouri Company as provided in Exhibit D, shall be less or greater than \$15,000,000.00, the amount of the notes and preferred stock of the Panhandle Company to be received by the Missouri Company, the amount of notes of the Central Company to be delivered to the Panhandle Company and the amount of notes and preferred stock of the Panhandle Company to be received by the Central Company in accordance with paragraphs 1 and 2 hereof, respectively, shall in each case be correspondingly reduced or increased

upon the same basis as the amounts of such stock and/or notes to be respectively received or delivered by said Companies, is computed in said paragraphs 1 and 2 in the case of a net expenditure of \$15,000,000, by the Missouri Company on its properties, all as set forth in Exhibit E hereto, provided, however, that in the event that said net amount so expended by the Missouri Company on its properties plus the amount of cash, if any, in excess of the \$500,000.00 to be retained by the Missouri Company as provided in Exhibit D, shall be less than \$14,000,000.00, the Central Company may at its option elect to terminate this contract.

7. The Missouri Company agrees to indemnify and save harmless the Panhandle Company against any liability of the Missouri Company and its subsidiaries for the payment of money not disclosed in the balance sheet and statement of liabilities hereto attached, marked Exhibits A and B, other [fol. 70] than liabilities under executory contracts and commitments in the ordinary course of business.

8. The Central Company agrees upon the consummation of this contract that it will arrange for a temporary loan to be used for the construction of pipe lines, to be made by the Chase National Bank of the City of New York to the Panhandle Company, of not less than \$6,000,000, upon the note of that Company, to be payable March 31, 1931, and bearing interest at $4\frac{1}{2}\%$, plus a commission of one-half of one percent, such loan to be guaranteed by endorsement or otherwise by the Missouri Company and the Central Co.

9. Upon the consummation of this contract the Central Company proposes to provide banking facilities to the Panhandle Company to enable it to complete its pipe line construction program.

10. All legalities in connection with the organization of the Panhandle Company, the transfer to it of the assets and the assumption by it of liabilities of Missouri Company and the form and sufficiency thereof, and the sufficiency of the titles of the properties to be owned on the consummation hereof by Panhandle Company and its subsidiaries, the validity and sufficiency of all franchises, contracts, gas and other leases, rights-of-way and easements and the reasonable feasibility from a legal standpoint of the completion of proposed pipe-line construction, shall be subject to the approval of counsel for the Central Company,

and the Missouri Company shall furnish immediately all data, information, and documents reasonably required by the Central Company to permit the verification of representations and the consideration of the legalities herein provided for.

[fol. 71] 11. All legalities in connection with the organization of Central Company shall be subject to the approval of counsel for the Missouri Company and the Central Company agrees to furnish all data, information, and documents reasonably required by the Missouri Company to permit the verification of representations and the consideration of the legalities herein provided for.

12. The closing date for the consummation of this contract shall be October 1, 1930, and the deliveries and transfers required to be made hereunder shall be made on said closing date at the office of Harris, Forbes & Company in New York City, or at such other place as shall be mutually agreed upon between the parties.

This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of Missouri Company, shall be subject to the approval of the Board of Directors of the Missouri Company at a meeting to be held not later than September 17, 1930, and also subject to the approval of the stockholders of Missouri Company.

All transfer stamps and original issue stamps in connection with the securities covered by this agreement shall be paid by Panhandle Company.

In Witness Whereof the parties hereto have executed this instrument this 8th day of September 1930.

Missouri-Kansas Pipe Line Company, By Frank P. Parish; Central Public Service Corporation, By A. E. Peirce, President.

[fol. 72]

EXHIBIT "C" TO PETITION

Contract, this 17th day of September 1930 between Missouri-Kansas Pipe Line Company (hereinafter referred to as "Pipe Line Company"), party of the first part, The

National City Company (hereinafter referred to as "City Company"), party of the second part, and Columbia Oil and Gasoline Corporation (hereinafter referred to as "Columbia"), party of the third part.

1. The Pipe Line Company represents to the City Company and to Columbia as follows:

(a) The Pipe Line Company is a corporation duly organized and existing under the laws of the State of Delaware, with an authorized capital stock consisting of 5,000,000 shares of Common Stock, of the par value of \$5 each, and 5,000,000 shares of Class B stock of the par value of \$1 each. Of the said stock, 1,065,452 shares of Common Stock (exclusive of dividend scrip) and no more are now outstanding, and 1,598,918 shares of Class B Stock and no more have been issued and are now deposited under a Voting Trust Agreement. The Pipe Line Company has no stock of any class, except as above set forth and has no funded indebtedness.

(b) Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Company") is a corporation duly organized and existing under the laws of the State of Delaware, having a total authorized share capital consisting of 15,000 shares of Preferred Stock, of the par value of \$100 a share, and 10,000 shares of Common Stock, with [fol. 73] out par value, all of which Preferred Stock has heretofore been issued but has since been retired, and is now held in the treasury of the Panhandle Company, and will not be reissued, and all of which Common Stock is now issued and outstanding and owned by the Pipe Line Company. No options or rights to purchase any of the said stock are now outstanding. All the outstanding indebtedness of the Panhandle Company, except indebtedness for current construction and material costs, gas leases and the like, is owned by the Pipe Line Company and represents in general advances made to the Panhandle Company by the Pipe Line Company for the acquisition and construction of its properties.

(c) The Panhandle Company has been organized for the purpose of building and operating a gas pipe line from the Panhandle district of the State of Texas to the Indiana-Illinois state line, through the states of Texas, Oklahoma,

Kansas, Missouri, and Illinois, with lateral lines. It or its wholly owned subsidiaries, Texas Interstate Pipe Line Company and/or Panhandle Eastern Pipe Line Company of Illinois, have acquired the right-of-way for a substantial part, of approximately 350 miles, out of a total of approximately 930 miles, of the said pipe line, and have constructed approximately 200 miles of the pipe line. The said pipe line has and will be constructed of 22-inch pipe from the point of beginning in Moore County, Texas, to Liberal, Kansas, of 24-inch pipe from Liberal, Kansas, to a point near the Missouri state line, of 22-inch pipe from the Missouri state line to the Peoria branch, and of 20-inch pipe from the said Peoria branch to the Indiana-Illinois state line. [fol. 74] Copies of the contracts for the construction of the pipe line, initialed for identification, will be furnished by the officer of the Pipe Line Company signing this contract.

(d) In addition to the pipe-line property above described, the Panhandle Company, through its said subsidiary, Texas Interstate Pipe Line Company, controls approximately 138,000 acres of natural-gas producing lands.

(e) The Pipe Line Company either directly and/or through one hundred per cent stock ownership in the Missouri-Kansas Gas Company and Central States Gas Utilities Company (an Illinois Corporation), and/or through a fifty-one per cent stock ownership in J. D. Judd & Co. (a Delaware Corporation), and Shale Gas Corporation (a Delaware Corporation) owns natural gas properties including leases or gas purchase contracts in the States of Missouri and Kansas, and a system of pipe lines for the supplying of natural gas to the following cities and towns: Kansas City, Mo. (wholesale delivery to American Pipe Line Company), Independence, Mo., Delton, Mo., Loose Springs, Mo., Morton City, Mo., Raytown, Mo., Paola, Kan., Osawatamie, Kan., Rantoul, Kan., Imes, Kan., Greely, Kan., Lewisburg, Kan., Lane, Kan., Chanute, Kan.

(f) The net asset position of the Panhandle Company and its subsidiary companies and of the subsidiary companies mentioned in paragraph (e) above (except for inter-company transfers) shall not be substantially less favorable at the Closing Date than as shown on the pro forma consolidating balance sheet prepared by Arthur Andersen & Co., certified public accountants, as of June 30, 1930. No

[fol. 75] dividend or other distribution of assets shall be made by the Panhandle Company or any of the above subsidiary companies pending the Closing Date.

II. The City Company represents to the Pipe Line Company and Columbia that it is a corporation duly organized and existing under the laws of the State of New York and has full corporate power to enter into this contract and to perform its obligations hereunder.

III. Columbia represents to the Pipe Line Company and the City Company that it is a corporation duly organized and existing under the laws of the State of Delaware, with an authorized capital stock consisting of 3,175,000 shares of which shares all of the Preferred Shares are owned by Columbia Gas & Electric Corporation and all of the Common Stock is deposited in a Voting Trust of which P. G. Gossler and G. W. Crawford are the Voting Trustees. Columbia represents that its net worth is over \$35,000,000.

IV. The Pipe Line Company (Mokan) agrees with the parties hereto as follows:

(a) That it will transfer to the Panhandle Company all of the natural-gas fields, gas contracts, pipe lines, distributing systems, et cetera, which it owns wherever located, except those located in Kentucky or Southern Indiana, and its stock ownership in all corporations which may own similar property located in the same territory.

(b) That it will sell and deliver to Columbia 5,000 shares of Common Stock of the Panhandle Company (being one-half of its total stock outstanding) at the price per share determined as provided in Article VIII hereof.

[fol. 76] (c) That it will on or before the Closing Date pay, without recourse to the original debtor or obligor, all the debts and obligations of the Panhandle Company and of its subsidiaries, and of the other corporations the stock of which is to be transferred under paragraph (a) of this Article, existing on August 31, 1930, as determined by Arthur Andersen & Co., certified public accountants, and that the Pipe Line Company will cancel any debt or obligation to it of the Panhandle Company, or of its subsidiaries or of any of said corporations referred to in this paragraph (c) as of August 31, 1930. The Panhandle Company will

reimburse the Pipe Line Company with interest at the rate of six per cent per annum from the date of such advances to the date of reimbursement for any amounts advanced by the Pipe Line Company subsequently to August 31, 1930, to the Panhandle Company or its subsidiaries or to any of the other corporations, the stock of which is to be transferred under paragraph (a) of this Article or for account of the properties other than stock, owned directly by it and to be transferred to Panhandle Company under paragraph (a) of this Article IV, other than amounts advanced for the purpose of paying debts or obligations existing on said date as provided heretofore in this paragraph.

(d) From time to time as requested by Columbia on or prior to March 15, 1931, the Pipe Line Company will sell to Columbia all or any part of 2,000 shares of Common Stock of the Panhandle Company (said 2,000 shares being twenty per cent of its total outstanding stock) at the same price per share as is determined for the purchase by Columbia of the original 5,000 shares of stock of Panhandle Company.

(e) The Pipe Line Company, either directly or through its present and/or future subsidiaries, will enter into gas purchase contracts with the Panhandle Company upon substantially the following terms:

(1) An excess-capacity contract for the purchase up to 20,000,000 cubic feet of gas per day at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancellation by either party on one year's notice, at the rate of 26½ cents per M cubic feet, deliveries under such contract to be as required by the Pipe Line Company and to aggregate for each year an amount producing at least a 70-per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 20,000,000 cubic feet per day, and after the expiration of one year from the effective date

of this firm contract such maximum day shall not exceed the maximum day established during said first year.

(f) The Pipe Line Company will cause the Panhandle Company, pursuant to due corporate action, to create an issue of \$20,000,000 aggregate principal amount, of Bonds [fol. 78] substantially in accordance with Schedule A hereto attached.

(g) The Pipe Line Company will deliver to or on the order of the City Company 200,000 shares of the Pipe Line Company's Common Stock as presently constituted as consideration for the purchase of the Bonds and the arranging of the credits hereinafter in Article VI provided for, and will cause the Panhandle Company to sell and deliver to the City Company the entire issue of \$20,000,000 aggregate principal amount, of bonds, above described in Schedule A, for the purchase price paid to the Panhandle Company of \$18,000,000, plus accrued interest on the said \$20,000,000, aggregate principal amount, of Bonds from October 1, 1930, to the date of delivery, and to pay the usual expenses in connection with such financing.

V. Columbia agrees with parties hereto as follows:

(a) That it will purchase the said 5,000 shares of stock of Panhandle and pay therefor the price per share determined as provided in Article VIII hereof.

(b) That it will not exercise its right to acquire any of the 2,000 shares of stock of Panhandle referred to in paragraph (d) of Article IV hereof unless simultaneously therewith it shall have contracted to sell to one or more oil, gas, or utility companies the stock so to be acquired by Columbia from the Pipe Line Company and an equal amount of similar stock then owned by Columbia and, unless Columbia and the Pipe Line Company have agreed otherwise, as a [fol. 79] part of the contract the purchaser has agreed to contribute its pro rata share of any additional financing referred to in Article VII, paragraph (a).

(c) That it will cause the Columbia Gas & Electric Corporation, either directly or through its present and/or future subsidiaries, to enter into gas-purchase contracts with the Panhandle Company at or near the Indiana-Illinois state line upon substantially the following terms:

(1) An excess capacity contract for the purchase up to 20,000,000 cubic feet of gas per day, at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess-capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancellation by either party on one year's notice, at the rate of $26\frac{1}{2}$ cents per M cubic feet, deliveries under such contract to be as required by Columbia and to aggregate for each year an amount producing at least a 70 per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 30,000,000 cubic feet per day, and after the expiration of one year from the effective date of this firm contract such maximum day shall not exceed the maximum day established during said first year.

VI. The City Company agrees with the parties hereto:

[fol. 80] (a) That it will purchase the said bonds described in paragraph (f) of Article IV and will pay the purchase price therefor on the Closing Date.

(b) That it will arrange a credit from the National City Bank of New York to the Panhandle Company of:

(1) \$3,000,000, effective at once and running until the Closing Date in this agreement:

(2) \$5,000,000, given on or before October 10, 1930, and running until 30 days after said Closing Date, provided, that the Panhandle Company will apply out of the proceeds from the Sale of its Bonds so much as it may draw down for September construction to the earlier repayment of such credit;

(3) From time to time, so long as any of the proceeds from the sale of said Bonds remain in escrow with the Trustee, on or before the 10th day of any month, an amount substantially equivalent to the cash which during that month the Panhandle Company may be entitled to withdraw

from escrow for expenditures made by it in the previous month.

VII. The Pipe Line Company and Columbia agree with the parties hereto:

(a) That they will, subject to the provisions of Article V paragraph (b) hereof, advance to the Panhandle Company in equal amounts all cash in excess of that expended or for which liabilities as determined by Arthur Andersen & Co. existed, on August 31, 1930, and of the proceeds of the Bond issue, necessary to complete the pipe line under construction from Texas to the Indiana-Illinois state line and take therefor notes and common stock in the ratio of \$90 in notes and \$10 in two shares of common stock as pre-[fol. 81] sently constituted, provided that the notes shall be specifically subordinated to the Bonds and shall mature at a date later than the maturity of the Bonds.

(b) In the event that the total cost of the completion of the pipe line heretofore in this Article VII referred to is less than \$40,000,000, then the Panhandle Company will deposit with the trustee for the Bonds the difference between \$40,000,000, and such total cost. Such deposit may be withdrawn from time to time by the Panhandle Company for 100 percent of capital expenditures subsequently made, or such deposit shall be returned to the Panhandle Company from time to time upon cancellation or redemption of Bonds (other than out of Sinking Fund moneys) in amounts equal to 200 percent of the principal amount of Bonds so canceled or redeemed. In the event such total cost is in excess of \$40,000,000, then the Panhandle Company shall be entitled to have additional Bonds delivered to it equal in principal amount to 50 percent of such excess.

(c) That they will cause the Panhandle Company to put the pipe line into commercial operation as soon as practical after completion, and to operate the same at its highest possible efficiency.

VIII. The price per share for the stock of Panhandle to be sold by the Pipe Line Company and to be purchased by Columbia under the provisions of this Contract shall be ascertained as follows: There shall be determined by Arthur Andersen & Co. the actual cash investment as of August 31, 1930, of the Pipe Line Company system in the

Panhandle Company and the Panhandle's subsidiary companies as these subsidiaries now exist, such cash investment to be the actual original cash cost to the Pipe Line Company system, plus interest thereon during construction at the rate of six percent per annum, and such cash cost to include the payments made for engineering services by others than companies affiliated with the Pipe Line Company system, legal expenses, taxes during construction, organization costs, costs of franchises, and the \$631,000 expended by the Panhandle Company for gas-sale or gas-purchase contracts. To such aggregate cash investment shall be added the debts and obligations existing of the Panhandle Company and its subsidiaries on August 31, 1930, to be paid by the Pipe Line Company as per Article IV, paragraph (c), above (these debts and obligations not to include those of the subsidiaries of the Pipe Line Company whose stock is to be transferred to the Panhandle Company as per said Article IV, paragraph (c)). To the sum so ascertained shall be added \$7,333,000. The price per share of Panhandle Stock shall be obtained by dividing the total sum by 10,000 and adding interest on said price at the rate of six percent per annum from August 31, 1930, to the date of payment for each share of stock.

IX. The parties hereto agree that the certificate of incorporation of Panhandle Company will be amended to restore to the Common Stock of that Company a preemptive right in respect of any further issue of voting stock.

X. The parties hereto agree that delivery and payment for shares of stock and Bonds heretofore provided for in paragraph (a) of Article V and paragraph (a) of Article VI shall be made at the Corporate Trust Department of the [fol. 83] City Bank Farmers Trust Company, No. 52 Wall Street, Borough of Manhattan, City and State of New York, on October 7, 1930, between the hours of 10 o'clock A. M. and 12 o'clock noon, on that day, which date is sometimes heretofore called the Closing Date.

XI. This contract is entered into by the City Company upon the following conditions:

(a) The legality of the issue of the Bonds of the Panhandle Company, referred to in Article IV hereof, the title of the Panhandle Company to its properties, the legality and sufficiency of any and all franchises necessary for their

present operations and for operations presently contemplated, and all other legal details in connection with the execution of this Contract shall be subject to approval of counsel for the City Company.

(b) In case Columbia shall for any reason fail to purchase the stock of the Panhandle Company then the City Company shall, as its option, have the right to withdraw from this Contract and to be relieved from any and all obligation hereunder, upon giving to the Pipe Line Company notice of exercise of its said option.

XII. Anything herein to the contrary notwithstanding, should the City Company for any reason fail to perform its obligations under this Contract, the obligations of Columbia and the Pipe Line Company hereunder shall continue, in which event Columbia and the Pipe Line Company will, subject to the provisions of Article V, paragraph (b), hereof, advance to the Panhandle Company in equal amounts all cash in excess of that expended or for which liabilities as determined by Arthur Andersen & Co. existed [fol. 84] on August 31, 1930, necessary to complete the pipe line under construction from Texas to the Indiana-Illinois state line and take therefor notes and common stock in the ratio of \$90 in notes and \$10 in two shares of common stock as presently constituted, provided that the notes shall be specifically subordinated to the Bonds and shall mature at a date later than the maturity of the Bonds.

XIII. The Pipe Line Company will cause the Panhandle Company to deliver to the City Company a letter signed by the President of the Panhandle Company descriptive of its properties and the project and of the Bonds in reasonable detail and in form satisfactory to the City Company. Columbia will cooperate in the preparation of such letter. From time to time the Pipe Line Company and Columbia will cause the Panhandle Company to furnish the City Company with quarterly statements of operations and balance sheet in reasonable detail.

XIV. If within 15 days after written notice that payment will be required by the Panhandle Company for the completion of its pipe line, either Columbia or the Pipe Line Company shall fail to provide their share of the necessary funds required as provided in Article VII, paragraph (a),

or in Article XII hereof, the party not in default may itself provide such funds and shall be entitled to receive from the Panhandle Company therefor the same securities as would have been given to the other party so in default if it had made the advance and the right of the party in default to proceed farther with such financing shall terminate.

[fol. 85] In witness whereof the parties hereto have executed this Contract by their duly authorized officers, the day and year first above written.

Missouri-Kansas Pipe Line Company, by Frank P. Parish, President, The National City Company, by Stanley A. Russell, V. Pres., Columbia Oil and Gasoline Corporation, by Philip G. Gossler, President.

[fol. 86]

EXHIBIT "D" TO PETITION

Memorandum dated September 30, 1930, between Columbia Oil & Gasoline Corporation, hereinafter called the Oil Company, and Missouri-Kansas Pipe Line Company, hereinafter called the Pipe Line Company.

The parties have executed a contract with The National City Company under date of September 17, 1930, which is hereafter referred to as the Contract.

It is mutually agreed as follows:

I. The parties will, at the closing of the purchase of the bonds, deposit in a Voting Trust, of which Philip G. Gossler, Frank P. Parish, and George H. Howard will be the Voting Trustees, all of the stock of the Panhandle Eastern Pipe Line Company, of which a 50% interest is sold by Pipe Line Company to the Oil Company under the contract and the remaining 50% interest is retained by the Pipe Line Company, so that the entire 100% interest in said stock will be under the Voting Trust. Voting Trust certificates in identical form will be issued to the Oil Company and the Pipe Line Company representing their stock deposited. The Voting Trust will run for 10 years (or such longer period as may be allowed by Delaware law); will confer upon the Voting Trustees all voting powers in respect of the stock, the action of the Trustees to be by a majority thereof, and will provide for succession to the respective Voting Trustees, in the case of Mr. Gossler, by nomination of Columbia

[fol. 87] Oil & Gasoline Corporation, in the case of Mr. Parish by nomination of Missouri-Kansas Pipe Line Company, and in the case of Mr. Howard, by nomination of The United Corporation.

II. The provisions of the contract for the sale of up to an additional 20% of the stock of Panhandle Eastern Pipe Line Company, by the Pipe Line Company to the Oil Company for resale by it, will be fulfilled by the delivery of Voting Trust certificates, as will also the Oil Company's obligation under the contract to resell a like amount of the Panhandle Eastern Pipe Line Company's shares of stock which it owns to the same purchaser, and the Voting Trust agreement will permit the withdrawal of stock certificates, if the purchaser requires, against cancellation of the corresponding Voting Trust Certificates, for the purpose of making delivery for such resale. Such resale may not be made to Columbia Gas & Electric Corporation, but it is agreed that such resale may be made, among others, to The United Corporation. The date on or before which the Oil Company can purchase such additional 20% and such resale can be made, is extended from March 15, 1931, to September 15, 1931.

III. The board of directors of the Panhandle Eastern Pipe Line Company will forthwith be reconstituted so that all but one thereof shall be nominated, 50% by the Oil Company and 50% by the Pipe Line Company, and the remaining director shall be Mr. George H. Howard or a nominee of the United Corporation. At the closing of the purchase of the bonds the Pipe Line Company will procure the resignations of all the directors of the Panhandle Eastern Pipe Line Company and will deliver to the Oil Company the resignations of the directors necessary to provide for the substitution of the nominees of the Oil Company and of Mr. Howard or the nominee of The United Corporation. The reconstituted board will have not less than nine directors. In case of resale of any of the stock of the Panhandle Eastern Pipe Line Company by the Oil Company as per the preceding paragraph, the purchaser shall, if the Oil Company request, be allowed proportionate representation on the board, the Pipe Line Company and the Oil Company contributing proportionately thereto out of their respective nominees unless the board shall be increased for the purpose.

IV. The purchase by the Oil Company from the National City Company of the bonds which are referred to in the contract is for account of the Oil Company alone and the Pipe Line Company is not interested therein.

V. At the closing of the purchase of the bonds, the Pipe Line Company and the Oil Company will, if the Oil Company requests, deposit each 20% of the voting trust certificates with Guaranty Trust Company of New York under an escrow agreement providing for their release to carry out the resale referred to in paragraph II above, or, if there is no resale, to be returned to the parties.

VI. The properties of the Pipe Line Company in Tennessee are to be treated in the same way as the Kentucky and southern Indiana properties of the Pipe Line Company are treated under the contract, i. e., excluded from transfer [fol. 89] to the Panhandle Eastern Pipe Line Company, and the cost thereof not to be included in the computation of the price per share of Panhandle stock under the contract.

Witness the signatures of the above parties.

Columbia Oil & Gasoline Corporation, by P. G. Gossler, President, Missouri-Kansas Pipe Line Company, by Frank P. Parish, President.

[fol. 90] EXHIBIT "E" TO PETITION

Letter, Dated March 14, 1934, of Panhandle Corporation, to Holders of Its Two-Year 6% Collateral Trust Notes

Offer of Exchange, Dated March 12, 1934, of Panhandle Corporation, to Holders of Its Two-Year 6% Collateral Trust Notes

Plan of Readjustment of Funded Debt and Capitalization, Dated March 12, 1934, of Panhandle Eastern Pipe Line Company

Agreement, Dated March 12, 1934, Between Columbia Oil & Gasoline Corporation and Panhandle Corporation

Panhandle Corporation,
Room 2700, 63 Wall Street,
New York, New York, March 14, 1934.

To the Holders of Two-Year 6% Collateral Trust Notes of
Panhandle Corporation:

The above-described Notes of Panhandle Corporation (herein called the "Panhandle Notes") matured by their terms on March 15, 1933, but the holders of approximately [fol. 91] 98% of such Notes consented to an extension of maturity to March 15, 1934. These Notes, constituting the only funded indebtedness of Panhandle Corporation, are secured by pledge of \$4,945,500 principal amount of 6% Promissory Notes (subordinated), due October 2, 1950, and 114,900 shares of Common Stock (represented by Voting Trust Certificates) of Panhandle Eastern Pipe Line Company (herein called "Eastern"), which latter Notes and stock constitute substantially all of the assets of Panhandle Corporation. Consequently Panhandle Corporation is without funds with which to meet its Notes at their extended maturity on March 15, 1934.

Owing to the depression, the demand for natural gas, both for industrial and domestic purposes, in the territory served by the Eastern pipe line has not been sufficient to permit Eastern to develop its earnings to the point where they would cover its present fixed charges and consequently, as indicated by the attached Plan of Readjustment of Eastern, there is danger of default not only upon the above-named subordinated Notes of Eastern, of which \$9,891,000 are outstanding, but also upon its Mortgage Bonds, of which \$19,400,000 are outstanding, a default which would probably result in a foreclosure of the mortgage securing such Bonds and greatly jeopardize the position of the Notes and stock of Eastern, which constitute collateral for the Panhandle Notes.

Under these conditions, Eastern has proposed to its security holders a Plan of Readjustment of its Funded Debt and Capitalization, and Panhandle Corporation, in order to put its Noteholders in a position where they can assent [fol. 92] to the Eastern Plan, has proposed to such holders an Offer of Exchange of Panhandle Notes for a like principal amount of Eastern Notes. Copies of such Offer of Exchange and Eastern Plan are attached hereto.

Holders of Panhandle Notes who accept the proposals set forth in such Offer and Plan will receive (if and when such Offer and Eastern Plan are carried out), for each \$1,000 principal amount of Panhandle Notes \$750 principal amount of Mortgage Bonds of Eastern, due October 1, 1950: Such Mortgage Bonds are to be part of a total issue of \$19,400,000 principal amount and will constitute the only funded debt of Eastern upon consummation of the Eastern Plan; except for \$1,600,000 of Non-Interest Bearing Notes, due September 1, 1936. They will bear interest at the rate of 6% per annum, except that for the years 1934, 1935, and 1936 they will bear fixed interest at the rate of 4% per annum, and an additional 2% per annum payable when earned under the conditions to be described in the Indenture securing such Bonds and in any event at the maturity or earlier redemption of the Bonds. For a further statement of the terms of such Bonds and a description of the security therefor reference is made to Schedule B of the Eastern Plan attached hereto.

The Board of Directors of Panhandle Corporation has approved the Eastern Plan and believes that, in view of the financial condition of Eastern disclosed by such Plan and of the junior position of the Eastern securities owned by Panhandle Corporation and of the danger that a foreclosure of the senior securities of Eastern would wipe out such junior securities, the attached Offer of Exchange and Eastern Plan are in the interest of the holders of the Pan-[fol. 93] handle Notes. It therefore urges the prompt acceptance of such Offer and Eastern Plan by the holders of all of the Panhandle Notes.

Holders of \$3,276,000 of Panhandle Notes (out of a total of \$4,940,000 principal amount outstanding) have already indicated their acceptance of such Offer and Eastern Plan.

Reference is made to the attached Offer and Eastern Plan for a complete statement of their terms and conditions.

Holders of Panhandle Notes who desire to accept the Offer of Panhandle Corporation and to assent to the Eastern Plan with respect to the Notes of Eastern to be received by them under the Offer should execute the enclosed Letter of Transmittal and Power of Attorney and forward the same, together with their Panhandle Notes, to Chemical Bank & Trust Company, Corporate Trust Department, 165 Broadway, New York, N. Y.

Panhandle Corporation, by J. H. Hillman, Jr., President.

Panhandle Corporation Offer of Exchange, Dated March 12, 1934, to Holders of Its Two-Year 6% Collateral Trust Notes.

The above-named Notes of Panhandle Corporation (herein called the "Panhandle Notes"), which are outstanding in the principal amount of \$4,940,000, matured by their terms on March 15, 1933, but the holders of approximately 98% of such Notes consented to an extension of maturity to March 15, 1934. The Panhandle Notes are guaranteed by Missouri-Kansas Pipe Line Company, which is in [fol. 94] receivership. They constitute the only funded indebtedness of Panhandle Corporation and are secured by pledge of \$4,945,500 principal amount of 6% Promissory Notes (subordinated), due October 2, 1950, and 114,900 shares of Common Stock (represented by Voting Trust Certificates) of Panhandle Eastern Pipe Line Company, a Delaware corporation (herein called "Eastern"), which latter Notes and stock constitute substantially all of the assets of Panhandle Corporation. Consequently, Panhandle Corporation is without funds with which to meet its Notes at their extended maturity on March 15, 1934.

There is attached hereto a balance sheet, as at December 31, 1933, of Panhandle Corporation, certified by D. G. Sister-son & Co., certified public accountants.

Panhandle Eastern Pipe Line Company (Eastern).—The outstanding funded debt and capital stock of Eastern, all of which is owned by Panhandle Corporation and by Columbia Oil & Gasoline Corporation (herein called "Columbia Oil") is as follows:

	Owned by Panhandle	Owned by Columbia Oil
Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds").....	None	\$19,400,000
6% Promissory Notes (subordinated), due October 2, 1950 (herein called "Eastern Notes").....	\$4,945,500	\$4,945,500
Common Stock (represented by Voting Trust Certificates).....	114,900 shs.	114,900 shs.

A consolidated balance sheet as at December 31, 1933, of Eastern and its subsidiaries, and consolidated income accounts and summary of consolidated surplus accounts of [fol. 95] Eastern and its subsidiaries for the years ended December 31, 1932, and December 31, 1933, certified by Messrs. Arthur Anderson & Co., certified public accountants,

are attached as Schedule A to the Plan of Readjustment of Funded Debt and Capitalization of Eastern attached hereto.

The annual interest charge on the outstanding Existing Eastern Bonds amounts to \$1,164,000, the annual sinking fund to \$630,000, and the annual interest charge on the Eastern Notes to \$593,460. The cash position and earnings prospects of Eastern, according to the statements set forth in the attached Plan of Readjustment of Eastern, are such that the service of its present funded debt probably cannot be continued, with the result that, unless such fixed charges are reduced, a receivership of Eastern is unavoidable. Such a receivership or a default on the Existing Eastern Bonds or Eastern Notes would undoubtedly precipitate proceedings to foreclose the mortgage securing the Existing Eastern Bonds. In view of the fact that the Eastern Notes are unsecured and are also expressly subordinated to the Existing Eastern Bonds, such a foreclosure would greatly endanger the position of the Eastern Notes and stock owned by Panhandle Corporation, and, consequently, the position of the Panhandle Notes which are secured thereby.

Plan of Readjustment of Eastern.—Under these circumstances, the Board of Directors of Eastern has adopted a Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934, designed to reduce the fixed charges of Eastern and avoid a receivership of Eastern and a foreclosure of the mortgage securing the Existing Eastern [fol. 96] Bonds. A copy of such Plan of Readjustment is attached hereto, and reference is made thereto for a complete statement of its terms.

The treatment accorded by such Plan to the outstanding securities of Eastern may be summarized as follows:

Existing Securities	Securities to be Received under Plan
\$19,400,000 Existing Eastern Bonds	\$10,981,750 Modified Eastern Bonds; the entire Eastern Common Stock
\$9,891,000 Eastern Notes	\$7,418,250 Modified Eastern Bonds (at the rate of \$750 of Modified Eastern Bonds for each \$1,000 of Eastern Notes)
229,800 shs. Eastern Common Stock	\$1,000,000 Modified Eastern Bonds; \$1,600,000 Non-Interest Bearing Promissory Notes of Eastern, due September 1, 1936

One of the conditions imposed by Columbia Oil upon its assent to the Eastern Plan is the release by the stockholders of Panhandle Corporation, including the receivers of Missouri-Kansas Pipe Line Company, of certain alleged claims against Columbia Oil, Eastern, Columbia Gas & Electric

Corporation and certain of their respective subsidiaries, officers, and directors. Another condition imposed by Columbia Oil is the cancellation by the receivers of Missouri-Kansas Pipe Line Company and by Columbia Oil of certain rights, obligations, and claims relating to the purchase or sale of gas by Columbia Oil and Missouri-Kansas Pipe Line Company from Eastern. Such receivers now hold 25%, and upon consummation of the Eastern Plan will hold 37½%, of the capital stock of Panhandle Corporation and represent a large number of persons who, through Missouri-Kansas Pipe Line Company, have invested substantial sums in the Panhandle Eastern Pipe Line enterprise. There is attached hereto a copy of the agreement, dated March 12, 1934, between Panhandle Corporation and [fol. 97] Columbia Oil, relating to the assent to the Eastern Plan by Panhandle Corporation and Columbia Oil, to which reference is made for a complete statement of the terms of such assents and of the further agreements between Panhandle Corporation and Columbia Oil regarding such Plan.

The imposition of these conditions has made it necessary that the stockholders of Panhandle Corporation be given a participation in the benefits of the Eastern Plan, as hereinafter indicated.

Offer of Panhandle Corporation to Holders of Panhandle Notes.—In view of the impending maturity of the Panhandle Notes and of their lien on the securities of Eastern owned by Panhandle Corporation, it is essential to the success of the Eastern Plan that the holders of the Panhandle Notes be put in a position where they can participate directly in such Plan and assent thereto.

Consequently, Panhandle Corporation hereby offers (subject to the conditions set forth below) to the holders of Panhandle Notes the right to exchange such Notes for a like principal amount of Eastern Notes now pledged as part of the collateral securing the Panhandle Notes. Such exchange will enable the holders of the Panhandle Notes to assent to the Eastern Plan with respect to the Eastern Notes so to be received by them and thus to receive, in exchange for each \$1,000 of Eastern Notes, \$750 of Modified Eastern Bonds. Such exchange will also release from the lien of the Panhandle Notes the Eastern stock owned by Panhandle Corporation and enable Panhandle Corporation

to assent to the Eastern Plan with respect to such stock. It is expected that if the Eastern Plan and the Offer of Panhandle Corporation are carried out, Panhandle Corporation [fol. 98] will be dissolved and its assets remaining after the settlement of its debts distributed to its stockholders, thus giving them the participation in the benefits of the Eastern Plan referred to above.

In the event of the consummation of the Eastern Plan, the six months' interest accrued to March 2, 1934, on the Eastern Notes to be exchanged for Panhandle Notes as above indicated is to be paid. The interest upon the Modified Eastern Bonds at the rate called for by the Eastern Plan (namely, for the years 1934, 1935, and 1936, fixed interest at the rate of 4% per annum and income interest at the rate of 2% per annum, and thereafter fixed interest at the rate of 6% per annum) will commence on January 1, 1934. Holders of Panhandle Notes who accept the above Offer of Exchange and assent to the Eastern Plan will, upon consummation of the Eastern Plan, be entitled to receive, in cash, the six months' interest accrued to March 2, 1934, on the Eastern Notes to be received by them under the Offer of Exchange, less the amount of interest, at the rate of 6% per annum, accrued to March 2, 1934, and unpaid on the Modified Eastern Bonds delivered in exchange for such Eastern Notes under the Eastern Plan.

Conditions to Carrying out of Offer.—The carrying out of the above Offer is conditioned upon the following:

(a) The acceptance of the Offer by the holders of at least 98% (or such lesser percentage as Panhandle Corporation may determine) of the outstanding Panhandle Notes, within such period of time as Panhandle Corporation may determine; and

(b) The consummation of the Eastern Plan.
[fol. 99] Directors of Eastern and Panhandle Corporation.—Four of the present eight directors of Eastern were nominated by Columbia Oil, namely, Burt R. Bay (President of Eastern), Thomas B. Gregory (Vice President and Director of Columbia Oil and of Columbia Gas & Electric Corporation), Charles A. Munroe (President and Director of Columbia Oil and Director of Columbia Gas & Electric Corporation), and Thomas R. Weymouth (Vice President of Columbia Oil and of Columbia Gas & Electric Corporation). The other four directors were nominated by Pan-

handle Corporation, namely, Joseph A. Bower (Executive Vice President and Director of Chemical Bank & Trust Company), J. H. Hillman, Jr. (President and Director of Pennsylvania Industries, Inc.), Dean Mathey (Dillon, Read & Co.), and H. F. Reindel (Cotton, Franklin, Wright & Gordon). In the event of the consummation of the Eastern Plan, it is contemplated that the latter four directors will resign. Columbia Oil is the owner of certain of the Eastern Securities. Chemical Bank & Trust Company and Dillon, Read & Co. are owners of Panhandle Notes. J. H. Hillman, Jr., is an officer and/or Director and/or stockholder of various corporations which are owners of Panhandle Notes and/or Panhandle stock. Cotton, Franklin, Wright & Gordon are counsel for Panhandle Corporation.

The present directors of Panhandle Corporation are J. H. Hillman, Jr. (President), Thurlow G. Essington (Receiver of Missouri-Kansas Pipe Line Company, appointed by the United States District Court for the Northern District of Illinois, Eastern Division), Irving Herriott (of counsel for a 'Stockholders' Protective Committee of Missouri-[fol, 100] Kansas Pipe Line Company), H. F. Reindel (of counsel for Panhandle Corporation), and Thomas Watson (of counsel for Hillman Investment Company).

Method of Assent by Holders of Panhandle Notes.— Holders of Panhandle Notes who desire to accept the above Offer should deliver such Panhandle Notes to Chemical Bank & Trust Company, Corporate Trust Department, 165 Broadway, New York, N. Y., together with the enclosed Letter of Transmittal and Power of Attorney, properly executed, with signature guaranteed as therein indicated, authorizing Chemical Bank & Trust Company to accept the Offer of Panhandle Corporation and to surrender such Panhandle Notes to Panhandle Corporation for cancellation, against delivery to Chemical Bank & Trust Company for account of such Noteholders of an equal principal amount of Eastern Notes. Such Letter of Transmittal and Power of Attorney also authorize Chemical Bank & Trust Company to assent to the Eastern Plan with respect to the Eastern Notes thus to be received and, upon consummation of the Eastern Plan, to exchange such Eastern Notes for Modified Eastern Bonds at the rate of \$750 of Modified Eastern Bonds for each \$1,000 of Eastern Notes. Should the Offer of Panhandle Corporation and the Eastern Plan not be

carried out in accordance with their respective terms on or before December 31, 1934, the depositors of Panhandle Notes will be entitled to the return of the deposited Panhandle Notes without expense to them.

The above Offer of Panhandle Corporation will expire at the close of business on June 30, 1934, or such later [fol. 101] date as Panhandle Corporation may determine.

No commission or other remuneration is to be paid to any person, firm, or corporation as compensation for obtaining acceptances of this Offer.

Panhandle Corporation, by J. H. Hillman, Jr.,
President.

NOTE.—The Notes should be accompanied by the coupons maturing March 15, 1934.

Panhandle Corporation Balance Sheet, at December 31, 1933

Assets

Securities and Cash—Pledged with Chemical Bank & Trust Company, Trustee, to Secure Payment of Corporation's Two-Year 6% Collateral trust notes:

Cash on deposit with trustee \$4,886.81

Securities of Panhandle Eastern Pipe Line Company:

6% Promissory Notes, due October 2, 1950 4,945,500.00

114,900 Shares Capital Stock (Voting Trust Certificates) 10,244,209.15

Of the above stock, 3,000 shares were received in exchange for 1,000 shares of Panhandle Corporation, and were valued by the Directors at the time of acquisition at the value shown on October 31, 1930, on the books of Panhandle Eastern Pipe Line Company. This value was subsequently written down by order of the Directors to reflect a corresponding write-down of assets of Panhandle Eastern Pipe Line Company made by that corporation on its books in March 1932.

109,900 shares were acquired for cash at \$5.00 per share.

Total Assets Pledged with Trustee 15,194,595.96

Accrued interest on Panhandle Eastern Pipe Line Company 6% notes 97,252.50

Cash 163.94

15,292,012.40

[fol. 102]

Liabilities

Funded Debt:

Two-Year 6% Collateral Trust Notes, due March 15, 1933. . \$1,940,000.00

Consent has been requested from the holders thereof for the extension of these Notes for one (1) year, to March 15, 1934. At February 15, 1934, holders of \$4,877,000.00 of the Notes had assented to the extension.

Current Liabilities:**Notes Payable:**

Secured by deposit of 700 shares of Preferred Stock and 350 shares of Common Stock of Kentucky Natural Gas Corporation, borrowed from Missouri-Kansas Pipe Line Company.....	\$23,530.00
Unsecured Demand Notes.....	29,033.20

Accounts Payable.....	52,563.20
Accrued Interest Payable.....	12,550.11
	90,776.49

\$155,889.80

Missouri-Kansas Pipe Line Company:

Securities borrowed—Pledged as collateral with Notes Payable (as above)—700 shares of Preferred Stock and 350 shares of Common Stock of Kentucky Natural Gas Corporation.....	—0—
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Capital Stock:

Authorized and Outstanding, 1,000* shares of a par value of \$10.00 per share.....	10,000.00
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Capital Surplus:

Through valuation of Panhandle Eastern Pipe Line Company Stock.....	9,684,709.15
Paid-In Capital.....	637,879.95
	10,322,589.10

[fol. 103]

Operating Deficit:

Balance at March 31, 1933.....	\$123,767.91
Operating Loss for period from April 1, 1933, to December 31, 1933.....	12,698.50
	\$136,466.50

\$10,196,122.60

\$15,292,012.40

We have audited the accounts and records of Panhandle Corporation, a Maryland corporation, and certify that, in our opinion, the above Balance Sheet correctly sets forth the financial condition of the Company at December 31, 1933.

D. G. Sisterson & Company,
Certified Public Accountants.

Pittsburgh, Pa., February 26, 1934.

Panhandle Eastern Pipe Line Company—Plan of Readjustment of Funded Debt and Capitalization.

Dated, March 12, 1934.

Panhandle Eastern Pipe Line Company (herein called "Eastern") proposes to the holders of its outstanding securities a readjustment of its funded debt and capitalization in the manner and subject to the conditions herein set forth.

Condition of the Company

The funded debt and capitalization of Eastern are as follows:

Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds")	\$19,400,000
6% Promissory notes, due October 2, 1950 (herein called "Eastern Notes")	\$9,891,000
[fol. 104] Common Stock, without par value (represented by Voting Trust Certificates)	
..... shares	229,800

There are attached hereto as Schedule A, a consolidated balance sheet of Eastern and its subsidiaries, as at December 31, 1933, and consolidated income accounts and summary of consolidated surplus accounts of Eastern and its subsidiaries for the years ended December 31, 1932, and December 31, 1933, certified by Messrs. Arthur Andersen & Co., certified public accountants.

The semiannual interest charges, payable in March and April 1934 on the above Bonds and Notes amount to \$878,730 and the semiannual sinking fund payment on the above Bonds, due February 18, 1934, amounts to \$315,000. The above-mentioned balance sheet shows cash and receivables, at December 31, 1933, of about \$1,131,500, and of current liabilities, exclusive of accrued interest, of about \$223,900; leaving a balance of about \$907,600, plus any net income after December 31, 1933, to meet interest and sinking fund payments of \$1,193,730 due in February, March, and April of this year and substantially similar amounts becoming due in August, September, and October of this year and to maintain adequate working capital, particularly during the summer months when the cash receipts of Eastern are at their lowest point.

Owing to the depression, the demand for natural gas, both for industrial and domestic purposes, in the territory served by Eastern, has not been sufficient to permit Eastern to develop its earnings to the point where they would cover its present fixed charges. Consequently, in the opinion of the management of Eastern, the earnings pros-

pects and cash position of Eastern are such that the service of its present funded debt probably cannot be continued, with the result that unless such fixed charges are reduced a receivership of Eastern is unavoidable. Such a receivership or a default in the Existing Eastern Bonds or Eastern Notes would undoubtedly precipitate proceedings to foreclose the mortgage, securing the Existing Eastern Bonds.

In order to meet this situation the readjustment set forth in this Plan is proposed and is believed to be in the interests of all of the security holders of Eastern.

II

Capitalization of Eastern Upon Consummation of the Plan

Upon consummation of the Plan, the funded debt and capitalization of Eastern will be as follows:

	Authorized	Outstanding
Twenty-Year Mortgage Bonds, Series A, due October 1, 1950 (herein called "Modified Eastern Bonds")	\$19,400,000	\$19,400,000
Noninterest Bearing Promissory Notes, due September 1, 1936	\$1,600,000	\$1,600,000
Common Stock	200,000 shares	200,000

¹ Or such other number of shares with or without par value as Eastern may determine.

The Modified Eastern Bonds above referred to are to be the Existing Eastern Bonds with certain terms thereof and of the Indenture and Supplemental Indenture under which they are issued modified by agreement with the present holders thereof. The Modified Eastern Bonds will bear interest at the present rate of 6% per annum, except that for the years 1934, 1935, and 1936 they will bear fixed interest at the rate of 4% per annum and an additional 2% per annum payable when earned under the conditions to be described in the Second Supplemental Indenture and in any event at the maturity or earlier redemption of the Modified Eastern Bonds. A description of the terms of the Modified Eastern Bonds and of the security therefor is set forth in Schedule B.

III

Basis of Readjustment

1. The holders of \$19,400,000 principal amount of Existing Eastern Bonds will be entitled, in lieu of their present

holdings of Existing Eastern Bonds, to receive and/or retain, upon consummation of the Plan:

\$10,981,750 principal amount of Modified Eastern Bonds;
and

The entire amount of Common Stock to be authorized.

2. The holders of \$9,891,000 principal amount of Eastern Notes will be entitled, in lieu of their present holdings of Eastern Notes, to receive and/or retain, upon consummation of the Plan:

\$7,418,250 principal amount of Modified Eastern Bonds.

3. The holders of 229,800 shares of Common Stock of Eastern will be entitled, in lieu of their present holdings of such Common Stock, to receive and/or retain, upon consummation of the Plan:

\$1,000,000 principal amount of Modified Eastern Bonds;
and

\$1,600,000 principal amount of Non-Interest Bearing Promissory Notes of Eastern, due September 1, 1936.

[fol. 107]

IV

Adjustment of Interest and Sinking Fund

In the event of the consummation of the Plan, interest is to be paid by Eastern upon the Eastern Notes through March 2, 1934. Interest on the Modified Eastern Bonds at the rate provided in Schedule B (namely, fixed interest at the rate of 4% per annum and income interest at the rate of 2% per annum for the years 1934, 1935, and 1936) will commence January 1, 1934. Holders of Eastern Notes will upon consummation of the Plan be entitled to receive in cash the interest accrued on their Notes to March 2, 1934, less the amount of interest, at the rate of 6% per annum, accrued to March 2, 1934, and unpaid on the Modified Eastern Bonds delivered in exchange therefor. The Sinking Fund instalment of \$315,000 due upon the Existing Eastern Bonds on February 18, 1934, is to be waived and any part of such instalment which may have been paid is to be returned to Eastern and the Sinking Fund upon the Modified Eastern Bonds is to be payable as and when provided in Schedule B.

V

Method of Carrying Out the Plan

Columbia Oil & Gasoline Corporation is the holder of the entire outstanding issue of \$19,400,000 principal amount of Existing Eastern Bonds, of \$4,945,500 principal amount of Eastern Notes and 114,900 shares of Common Stock of Eastern. It is contemplated that the Plan is to be carried out by Columbia Oil & Gasoline Corporation assenting to the change in the terms of the Existing Eastern Bonds [fol. 108] called for by the Plan and retaining such of the resulting Modified Eastern Bonds as it will be entitled to hold under the terms of the Plan and delivering to Eastern the Eastern Notes and such of the Modified Eastern Bonds as are to be delivered by Eastern to the remaining security holders of Eastern. The remaining security holders of Eastern are to surrender their securities in exchange for the securities issuable to them under the terms of the Plan. The Voting Trustees for the Common Stock of Eastern will deliver the securities received by them under the Plan in lieu of such Common Stock to the holders of the Voting Trust Certificates. Eastern may, however, carry out the Plan by any other method determined by it.

VI

Conditions of Consummation of the Plan

Consummation of the Plan shall be conditioned upon the assent by the holders of all the outstanding securities of Eastern to the Plan, in the manner hereinafter provided, on or before June 30, 1934, or such later date, not later than December 31, 1934, fixed from time to time by Eastern.

VII

Method of Assent

Holders of Existing Eastern Bonds and Common Stock of Eastern may assent to the Plan by executing and delivering to Eastern an assent in such form as Eastern may determine.

Holders of Eastern Notes may assent to the Plan by executing and delivering to Eastern or to Chemical Bank & Trust Company, 165 Broadway, New York, N. Y., an assent

[fol. 109] and power of attorney in form approved by Eastern, together with such Eastern Notes.

No commission or other remuneration is to be paid to any person, firm, or corporation as compensation for obtaining assents to this Plan.

Panhandle Eastern Pipe Line Company, by B. R. Bay, President.

Schedule A.—Panhandle Eastern Pipe Line Company and Subsidiary Companies

Consolidated Balance Sheet as at December 31, 1933

Assets		
Plant, Property, Contracts, Leaseholds, Etc.:		
Texas to Indiana pipe-line system—At cost.	\$39,460,485.01	
Other wells, leaseholds, pipe lines, compressors, etc.—At cost.	3,170,712.02	
Gas purchase and sales contracts—At values assigned by the Board of Directors.	3,053,391.53	
		\$45,684,588.56
Investments:		
Investment in capital stock of subsidiary companies not consolidated—51% owned—At cost (book value \$55,724.65 after deducting abandoned property).	187,124.68	
Miscellaneous investments.	600.00	
		187,724.68
Bond Discount and Expense in Process of Amortization.		1,702,747.90
Prepaid Accounts and Deferred Charges:		
Property and leaseholds abandoned.	368,201.83	
Prepaid lease rentals and insurance.	32,199.89	
Other prepaid and unadjusted items.	93,213.01	
		493,614.73
[fol. 110]		
Current Assets:		
Cash on hand and in banks.	\$496,743.89	
Demand note, noninterest bearing, of Indiana Gas Transmission Corporation.	300,000.00	
Accounts and notes receivable.	334,771.52	
Materials and supplies (including construction materials) at book values.	269,574.03	
		\$1,401,089.44
		49,469,765.31
Liabilities		
Capital Stock and Surplus:		
Capital stock—		
Authorized 230,000 shares without par value; issued and outstanding 229,800 shares at declared value.	\$1,199,000.00	
Capital surplus (including paid-in surplus of \$19,285,867.47).	19,294,624.55	
Earned surplus (deficit).	2,492,577.54	
		\$18,001,047.01

Funded Debt:

Panhandle Eastern Pipe Line Company—
Twenty-Year Sinking Fund Mortgage
Gold Bonds, Series A, 6%, due October 1,
1950 (sinking fund payments \$630,000
per year until 1945; \$6,000 less each year
thereafter)—

Total issued..... 20,000,000.00
Less—Bonds retired and cancelled.... 600,000.00

6% Promissory Notes, due October 2, 1950.

19,400,000.00
9,891,000.00

29,291,000.00

Deferred Liabilities:

Customers' meter deposits..... 2,255.00
Other deferred liabilities..... 134,825.25

137,080.25

Due to Affiliated Companies.....

37,500.00

Current Liabilities:

Accounts payable..... 56,145.93
Accrued interest..... 487,264.41
Accrued state and local taxes..... 167,745.72

711,156.06

[fol. 111]

Reserves:

Depreciation and amortization..... \$1,228,129.56
Uncollectible accounts..... 7,245.27
Other reserves..... 56,607.16

\$1,291,981.99

49,469,765.31

Consolidated Income Accounts for the Years Ended December 31, 1932, and
December 31, 1933

Year ended December 31—

1933

1932

Gross Earnings:

Gas Sales..... \$2,416,397.62 \$1,788,359.33
Pipe Line Rentals and Miscellaneous..... 168,999.17 113,091.82

Total Gross Earnings..... 2,585,396.79 1,901,451.15

Operating Expenses and Taxes:

Operation..... 888,273.35 910,304.38
Maintenance..... 110,831.40 155,070.93
Taxes..... 262,375.23 219,459.98

Total Operating Expenses and Taxes..... 1,261,479.98 1,284,835.29

Net Earnings from Operations before Provision
for Depreciation and Amortization of Gas
Rights and Leases.....

1,323,916.81 616,615.86
8,234.75 28,237.94

Other Income.....

Net Earnings before Provision for De-
preciation and Amortization of Gas
Rights and Leases.....

1,332,151.56 644,853.80

Schedule A etc.—Continued

Interest Deductions:

Interest on Funded Debt—

Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%	1,177,300.00	1,200,000.00
6% Promissory Notes	593,460.00	559,473.00
Amortization of Debt Discount and Expense (see auditors' report)	102,702.87	104,898.59
Interest on Unfunded Debt	1,091.79	878.31
Less Interest Charged to Construction		*456,443.96

Total Interest Deductions	1,874,554.66	1,408,805.94
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* The period from the inception of the Company to March 31, 1932, has been treated by the Company as the period of construction of the pipe-line system and interest, taxes, and amortization of debt discount and expenses during this period were capitalized. The total net income for this period (including the three months ended March 31, 1932, for which a loss of \$4,947.19 was sustained) was \$48,604.69, after deducting \$264,072.64 provision for depreciation and amortization of gas rights and leases, but with no deduction for interest, taxes, or amortization of debt discount and expenses. Such net income was credited to the cost of construction of the pipe line.

[fol. 112]

Consolidated Income Accounts for the Years Ended September 31, 1932, and December 31, 1933—Continued

	Year ended December 31—	
	1933	1932
Net Loss before Provision for Depreciation and Amortization of Gas Rights and Leases	\$542,403.10	\$763,951.42
Provision for Depreciation and Amortization of Gas Rights and Leases	759,713.24	582,574.44
Net Loss	1,302,116.34	1,346,526.58
Net loss of Main Line Operations for Three Months ended March 31, 1932, Charged to Construction		14,947.19
Net Loss carried to Surplus	1,302,116.34	1,341,579.39

Summary of Consolidated Surplus Accounts for Years Ended December 31, 1932, and December 31, 1933

	Year ended December 31—	
	1933	1932
Earned surplus (deficit) balance beginning of year	\$1,105,754.84	\$234,049.13
Net loss for the year	1,302,116.34	1,341,579.39
	2,407,871.18	1,107,530.26
Surplus direct credits or charges:		
Unamortized debt discount and expense on bonds retired	54,706.36	
Premium on bonds retired	30,000.00	
Miscellaneous (net)		1,775.42
Earned surplus (deficit) balanced end of year	2,492,577.54	1,105,754.84
Capital surplus balanced end of year	19,294,624.55	19,285,867.47

To the Board of Directors, Panhandle Eastern Pipe Line Company:

We have made an examination of the consolidated balance sheet of the Panhandle Eastern Pipe Line Company and subsidiary companies as at December 31, 1933, and of the statement of consolidated income and surplus for the two years ended that date. In connection therewith we [fol. 113] examined or tested accounting records of the companies and other supporting evidence and obtained information and explanations from officers and employees of the companies; we also made a general review of the accounting methods and of the operating and income accounts for the two years, but we did not make a detailed audit of the transactions.

The foregoing financial statements have been prepared on the basis of our acceptance of the provisions for depreciation and amortization of gas rights and leases as determined by the companies. The company has amortized debt discount and expense on a straight-line basis, which method does not give expression to the retirement of bonds through the operations of the sinking fund. Unamortized debt discount and expense of \$54,706.36 applicable to bonds retired through the operations of the sinking fund during 1933, together with premium paid of \$30,000.00, has been charged direct to surplus by the company.

Subject to the comments in the preceding paragraph, in our opinion, based upon the examination referred to above, the foregoing consolidated balance sheet and related statement of income and surplus fairly present, in accordance with accepted principles of accounting consistently maintained by the companies for the two years under review, the financial position of Panhandle Eastern Pipe Line Company and subsidiary companies at December 31, 1933, and the results of their operations for the two years ended that date.

Arthur Andersen & Co., Certified Public Accountants.

Kansas City, Mo., February 8, 1934.

[fol. 114] Schedule B—Provisions of Modified Eastern Bonds Upon Consummation of Eastern Plan

The Modified Eastern Bonds are to be the Existing Eastern Bonds presently outstanding, modified so that the terms

thereof will conform to the terms as herein set forth. The Existing Eastern Bonds are outstanding as Bonds of Series A under the Mortgage Trust Indenture, dated as of October 1, 1930 (as supplemented and amended by a Supplemental Indenture, dated as of March 27, 1931), of Panhandle Eastern Pipe Line Company to City Bank Farmers Trust Company and James M. Kemper (successor to Walter Scott McLucas), as Trustees. Such Indenture is to be modified by the execution of a Second Supplemental Indenture so as to conform to the terms and provisions herein set forth with such other changes in the Indenture as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation (the Indenture, as modified by the Supplemental Indenture and as to be modified by the Second Supplemental Indenture being herein referred to as the "Amended Indenture"). Eastern may deliver under the Plan Bonds whose text conforms to the modifications herein provided for or old Bonds stamped with a notation of such modifications and the execution of such Second Supplemental Indenture. Subject to the provisions hereof and of the foregoing Plan, the Modified Eastern Bonds and Amended Indenture shall be in such form and have such terms as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation.

[fol. 115] The following is a summary of the terms of the Modified Eastern Bonds and a description of the security therefor:

1. Date and Form.—The Modified Eastern Bonds shall be known as Twenty-Year Mortgage Bonds, Series A. They shall be dated as of October 1, 1930, and shall mature October 1, 1950; they shall be coupon Bonds, registerable as to principal, in denominations of \$1,000, \$500 and \$250 or any multiple of \$1,000. Bonds of any denomination other than \$1,000 shall be exchangeable for an equal aggregate principal amount of Bonds of the denomination of \$1,000.

2. Interest and Sinking Fund.—The Modified Eastern Bonds shall bear fixed interest, payable semi-annually on April 1 and October 1 of each year, beginning April 1, 1934, at the rate of 4% per annum for the period from January 1, 1934, to December 31, 1936, and thereafter at the rate of 6% per annum. The Bonds shall also bear additional interest at the rate of 2% per annum for the period from

January 1, 1934, to December 31, 1936 (herein called "income interest"), payable on April 1, 1935, and April 1, 1936, to the extent that consolidated net earnings of Eastern and its subsidiaries for the preceding calendar year, after all charges, including fixed interest, depreciation and depletion, as determined by the Board of Directors, are sufficient for the payment of such income interest for such year, and payable thereafter to the extent that the annual Service Fund provided for below is sufficient for such payment (after providing for fixed interest as provided below) and payable in any event at maturity or earlier redemption of the Bonds.

[fol. 116] The Modified Eastern Bonds are to be entitled to a Service Fund each year, beginning with the year 1937, which shall amount to the sum provided in (a) or (b) below, whichever shall be less, namely:

(a) the amount of \$1,500,000 plus the amount of any accumulated and unpaid income interest for the period from January 1, 1934, to December 31, 1936, or

(b) the sum of—

(i) the amount of fixed interest becoming payable on the Bonds during each such year, plus

(ii) one-half of such portion of the consolidated earnings of Eastern and its subsidiaries for the preceding year, after fixed interest, available for depreciation and depletion as are actually appropriated for depreciation and depletion by the Board of Directors, plus

(iii) the amount of consolidated net earnings of Eastern and its subsidiaries for such preceding year, after fixed interest, depreciation, and depletion;

provided that if in any year (beginning with the year 1937) the Service Fund payable as above provided shall be less than \$1,500,000, the deficit shall accumulate and shall be added in subsequent years to the maximum amount specified in (a) above for payments into the Service Fund until such deficit shall have been paid. In the event that any Modified Eastern Bonds are issued under the Amended Indenture in addition to the \$19,400,000 thereof to be outstanding upon consummation of the Plan, the amount of \$1,500,000 referred to in (a) above shall thereafter be proportionately increased.

[fol. 117] The Service Fund shall be appropriated by the Trustee in each year to the following payments, in the following order, and the amount so appropriated shall be paid by Eastern to the Trustee on or before the dates indicated:

1st, To the payment of fixed interest becoming due on the Bonds during such year, such amount to be paid to the Trustee in semiannual installments on or before April 1 and October 1 of such year;

2nd, To the payment of any accumulated and unpaid income interest on the Bonds, such amounts to be paid to the Trustee on or before April 1 of such year, and to be paid by the Trustee to Bondholders on such April 1; and

3rd, To the payment of a Sinking Fund for the purchase of Bonds, such amount to be paid to the Trustee in two equal installments (as nearly as may be), on or before February 18 and August 21 of such year.

The amount paid into the Sinking Fund shall be applied by the Trustee to the purchase of Bonds as follows: The Trustee shall advertise for tenders by publishing a call for such tenders once a week for four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan, City of New York, the first publication to be not less than thirty nor more than thirty-five days prior to April 1 or October 1, as the case may be, and by mailing a copy of such call to Bondholders who have filed their address with the Trustee for such purpose. All tenders shall be opened by the Trustee on the Sinking Fund payment date and the Trustee shall accept the lowest [fol. 118] tenders thus made, to the extent necessary to exhaust the Sinking Fund, provided that the Trustee shall not purchase Bonds at a price in excess of 100 and accrued interest. Any moneys in the Sinking Fund not so expended shall be retained by the Trustee for account of the next succeeding instalment of the Sinking Fund and shall be credited against Eastern's obligation with respect to such instalment.

Eastern may increase any Sinking Fund payment over the amount above required to be paid or may make payments into the Sinking Fund, in addition to those above required to be made, on other than Sinking Fund payment dates, such moneys to be applied by the Trustee to the re-

tirement of Bonds, after thirty days' advertisement for tenders, as above provided; any such additional payment into the Sinking Fund shall be credited against Eastern's obligation with respect to succeeding Sinking Fund instalments. Eastern shall not, however, have the right to tender Bonds to the Trustee for sale to the Sinking Fund.

The income interest on the Modified Eastern Bonds is to be represented by coupons calling for $\frac{1}{2}\%$ income interest instalments, each payable as and when above provided, and any amount available for the payment of such income interest shall be paid out against the surrender of such coupons, any balance of such amount which is not sufficient for the payment of a full coupon to be carried forward and added to any amount thereafter becoming available for the payment of income interest.

3. Place of Payment. Tax provisions.—The Modified Eastern Bonds shall be payable both as to principal and [fol. 119] interest at the principal office of the Trustee in New York City. Interest on the Modified Eastern Bonds shall be payable without deduction for any Federal income tax not in excess of two per cent thereof which Eastern or the Trustee may be required or permitted to pay thereon or to retain therefrom under any present or future law of the United States. Eastern is to reimburse the owner of any Modified Eastern Bonds residing in Pennsylvania for the Pennsylvania Four Mills Tax assessed and paid with respect to such Bonds and is to reimburse any such owner residing in Wisconsin the amount of any Wisconsin income tax, not in excess of 6% of the interest received on such Bonds in any year, assessed and paid with respect to such interest.

4. Redemption of Bonds.—The Modified Eastern Bonds shall be redeemable in whole or in part, at the option of Eastern, at any time upon thirty days' prior published notice, on or before October 1, 1945, at 105; thereafter and on or before October 1, 1946, at 104; thereafter and on or before October 1, 1947, at 103; thereafter and on or before October 1, 1948, at 102; thereafter and on or before October 1, 1949, at 101; and thereafter until maturity at 100; plus accrued interest at the rate of 6% per annum in each case.

5. Security.—The Modified Eastern Bonds will be secured by a lien (through direct mortgage or by the pledge of de-

mand mortgages, indebtedness and capital stock of subsidiaries, as indicated below) upon the Panhandle Eastern Pipe Line System owned by Eastern directly or through subsidiaries and extending from the Panhandle District of Texas through the States of Texas, Oklahoma, Kansas, [fol. 120] Missouri, and Illinois to the Illinois-Indiana State line. The Pipe Line System includes the main line (owned entirely by Eastern except for the portion crossing the State of Illinois, which is owned by Panhandle Illinois Pipe Line Company, a wholly owned subsidiary), ranging from twenty to twenty-four inches in diameter and having a length of more than 850 miles; together with lateral transmission lines (owned by Eastern and Panhandle Illinois Pipe Line Company) extending to the communities served from the main pipe line, field and gathering lines (owned by Eastern) in the producing areas in Texas, Oklahoma, and southwestern Kansas, the natural-gas production from approximately 181,285 acres (controlled through leases or otherwise by Texas-Interstate Pipe Line Company, a wholly owned subsidiary of Eastern), of which about 11,289 acres are operated, and a one-half interest in the natural gas production from approximately 29,485 acres (similarly controlled), of which about 5,679 acres are operated.

The Pipe Line System is to be subject to the lien of the Amended Indenture by a direct mortgage on that part of the System owned directly by Eastern and by the pledge of the entire capital stock and indebtedness (except indebtedness secured by lien on newly acquired property existing or created at the time of acquisition thereof and except current liabilities) of Panhandle Illinois Pipe Line Company and Texas-Interstate Pipe Line Company. Indebtedness of these two subsidiaries in excess of \$500,000 must be represented, so far as legally permissible, by mortgage bonds payable on demand and pledged under the Amended Indenture. The covenant of Eastern, now contained in the [fol. 121] Indenture, to mortgage certain after-acquired property is to be modified so as to exclude after-acquired tangible personal property and the covenant of Eastern to record the Indenture as a chattel mortgage is to be omitted from the Amended Indenture.

The total cost of construction completed to April 1, 1932, of the Pipe Line System which is to be subject to the lien of the Amended Indenture, as certified by Messrs. Brokaw, Dixon, Garner & McKee, Geologists and Petroleum Engi-

neers, and by Messrs. Arthur Andersen & Co., certified public accountants, by certificates dated June 1, 1932, was \$39,099,745.31.

Eastern and certain of its subsidiaries own production, transmission, and distribution properties in the vicinity of Kansas City, known as the "local area properties", and certain distribution plants adjacent to the main pipe line, which properties are not now subject to the lien of the Indenture. These properties are not to be subject to the lien of the Amended Indenture.

Articles Seventh and Eighth of the Indenture are to be omitted from the Amended Indenture and the covenants of Eastern therein contained are to be waived. Under the terms of these Articles funds for the construction of the present pipe line were deposited with the Trustee and Eastern covenanted that if the pipe line should cost less than \$40,000,000 it would either invest the difference in property subject to the lien of the Indenture or retire Series A Bonds to such an extent that the cost of the pipe line should be at least twice the principal amount of Series A Bonds outstanding.

[fol. 122] 6. Issue of Additional Bonds.—Additional Bonds, over and above the \$19,400,000 principal amount of Modified Eastern Bonds (Series A) presently to be outstanding, may be issued under the Amended Indenture in one or more series, at such interest rates, with such redemption terms and with such other provisions (within the limitations to be set forth in the Amended Indenture) as the Board of Directors may from time to time determine. The Amended Indenture will provide, in substance, that, subject to the limitations to be contained therein, such additional Bonds may be issued for the following purposes, among others: (1) for the refunding, acquisition, or retirement of Bonds of any series or of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company (i. e., a company at least 95% of whose equity stock is owned by Eastern and pledged under the Amended Indenture), par for par; (2) in principal amounts not exceeding 50% of the cost or fair value of additional fixed assets acquired or constructed by Eastern, or by any pledged company, or of equity stock of any pledged company acquired by Eastern, subsequently to December 31, 1933, with certain limitations (to be set forth in

the Amended Indenture) upon the issue of Bonds against the acquisition or construction of additional fixed assets subject to existing liens or against the acquisition of equity stock subject to prior charges on assets; or (3) to provide cash to be deposited with the Trustee to be withdrawn for one or more of the foregoing purposes; provided, however, that no additional Bonds may be issued for any purposes except those set forth in (1) above unless consolidated net [fol. 123] earnings of Eastern and its subsidiaries, after depreciation and depletion, available for interest (as to be defined in the Amended Indenture), during twelve consecutive months ended not more than 90 days prior to the date of issuance of such additional Bonds shall have been not less than one and three-fourths times the consolidated annual charges on consolidated funded indebtedness (as to be defined in the Amended Indenture) to be outstanding immediately after the issuance of such additional Bonds.

7. Release of Mortgaged or Pledged Property.—The Amended Indenture is to provide for the release of mortgaged property or pledged securities or indebtedness, when no longer needed in the business of Eastern, only (except in the case of releases of property not exceeding \$5,000 in value in any one year) if such property or securities or indebtedness have been sold or exchanged for not less than their fair value, as determined by the Board of Directors of Eastern or taken by right of eminent domain; the proceeds of such sale or exchange, if in the form of property or securities, must be subjected to the lien of the Amended Indenture, or, if in the form of cash, must be deposited with the Trustee. Cash so deposited may be withdrawn (1) to reimburse Eastern or any pledged company for 100% of the cost or fair value of additional fixed assets acquired or constructed by it subsequent to December 31, 1933; (2) to reimburse Eastern for the cost or fair value of equity stock of any pledged company acquired by it subsequent to December 31, 1933; (3) for the retirement of Bonds of any series by purchase (in the case of Series A Bonds, through the Trustee which is to call for tenders as in the case of the [fol. 124] Sinking Fund) or by redemption; or (4) for the acquisition or retirement of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company. If more than one series of Bonds is outstanding, any proceeds of released property applied

to the retirement of Bonds shall be divided among the various series in proportion to the principal amount of Bonds of each series outstanding. Proceeds of insurance aggregating \$25,000 or more must be deposited with the Trustee and may be withdrawn for similar purposes or to reimburse Eastern for the cost of repairs or replacements.

Agreement made this 12th day of March 1934 between Columbia Oil & Gasoline Corporation, a Delaware corporation (hereinafter called "Columbia Oil"), party of the first part, and Panhandle Corporation, a Maryland corporation (hereinafter called "Panhandle"), party of the second part,

Witnesseth:

Whereas Panhandle Eastern Pipe Line Company, a Delaware corporation (hereinafter called "Eastern"), has promulgated a Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934 (hereinafter called the "Eastern Plan"), to which reference is hereby made; and Whereas Columbia Oil is the holder of \$19,400,000 principal amount of Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, of Eastern (herein called "Existing Eastern Bonds"), \$4,945,500 principal amount of 6% Promissory Notes of Eastern (herein called "Eastern Notes"), and 114,900 shares of Common Stock (represented by Voting Trust Certificates) of Eastern, all of which securities are pledged with Columbia Gas & Electric Corporation; and

Whereas Panhandle is the holder of \$4,945,500 principal amount of Eastern Notes and 114,900 shares of Common Stock (represented by Voting Trust Certificates) of Eastern, all of which Eastern Notes and Stock are pledged under a Collateral Trust Indenture, dated March 15, 1931, from Panhandle to Chemical Bank & Trust Company, as Trustee to secure \$4,940,000 principal amount of Two-Year 6% Collateral Trust Notes of Panhandle (hereinafter called the "Panhandle Notes"); and

Whereas the Panhandle Notes became due on March 15, 1933, and the holders of approximately 98% thereof have consented to the extension to March 15, 1934, of the maturity of such Notes; and

Whereas the outstanding stock of Panhandle is held in part by Henry T. Bush and C. Ray Phillips, as Receivers

of Missouri-Kansas Pipe Line Company appointed by the Chancery Court of the State of Delaware (herein called the "Mokan Receivers") and the balance by the Noteholders' Protective Committee of Missouri-Kansas Pipe Line Company, representing four depositors; and

Whereas Columbia Oil and Panhandle are satisfied with the provisions of the Eastern Plan and are willing to assent thereto with respect to the securities of Eastern owned by them, respectively, on the terms and conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, it is hereby agreed as follows:

[fol. 126] 1. Columbia Oil agrees, subject to the provisions of Article 3 hereof, to assent to the Eastern Plan with respect to the Existing Eastern Bonds and Eastern Notes held by it and to direct the Voting Trustees for the Eastern Common Stock to assent to the Eastern Plan with respect to the Eastern Common Stock represented by the Voting Trust Certificates held by Columbia Oil.

2. Panhandle will offer to the holders of Panhandle Notes an equal principal amount of Eastern Notes presently pledged as security for the Panhandle Notes in consideration of the surrender for cancellation and extinguishment of such Panhandle Notes, such Offer to be conditioned upon consummation of the Eastern Plan. In the event that the holders of 98% (or such lesser percentage as Panhandle may determine) of the outstanding Panhandle Notes shall accept said offer and shall assent to the Eastern Plan with respect to all of the Eastern Notes to be received by them under said offer, Panhandle agrees to assent to the Eastern Plan with respect to all securities of Eastern now owned by Panhandle except such of the Eastern Notes as shall be delivered to holders of Panhandle Notes under such offer of exchange, and to accept in exchange therefor the new securities deliverable under the Eastern Plan and to direct the Voting Trustees for the Eastern Common Stock to assent to the Eastern Plan with respect to the Eastern Common Stock represented by the Voting Trust Certificates held by Panhandle.

3. Columbia Oil shall not be subject to any obligation or liability hereunder, nor shall any assent which Columbia

Oil may give to the Eastern Plan become effective or binding unless

[fol. 127] (a) Panhandle and its stockholders, including the Mogan Receivers or their respective successors, such Receivers acting with the approval of the Court of Chancery of the State of Delaware, shall execute and deliver to Columbia Oil, Columbia Gas & Electric Corporation (a Delaware corporation) and their respective subsidiaries and the past and present officers and directors of said corporations, and to Eastern and its present officers and directors and to such of its past officers and directors as were nominees of Columbia Oil, good and sufficient releases (in form satisfactory to Columbia Oil) of all claims which Panhandle, its stockholders, the Mogan Receivers or Missouri-Kansas Pipe Line Company or any of them may have against said corporations or said officers or directors or any of them (other than claims under or pursuant to this agreement and/or the Eastern Plan);

(b) The Mogan Receivers or their respective successors shall, with the approval of said Court of Chancery, enter into an agreement with Columbia Oil, Columbia Gas & Electric Corporation, and Eastern for the cancellation of all rights and obligations of Columbia Oil, Columbia Gas & Electric Corporation, Eastern and Missouri-Kansas Pipe Line Company, and the Mogan Receivers for the purchase or sale of gas or the execution of gas contracts or other rights or obligations arising under a certain agreement, dated September 17, 1930, between Missouri-Kansas Pipe Line Company, The National City Company of New York, and Columbia Oil (including all modifications of said agreement); and

(c) Columbia Oil shall have received the written resignations of all directors of Eastern representing Panhandle, [fol. 128] conditioned upon the consummation of the Eastern Plan and effective when accepted by the Eastern Board of Directors.

4. Upon the date of consummation of the Eastern Plan, Columbia Oil agrees to purchase from Panhandle and Panhandle agrees to sell to Columbia Oil at 90% of their principal amount plus accrued and unpaid interest at the rate of 6% per annum from March 2, 1934, to the date of purchase, \$500,000 principal amount of Modified Eastern Bonds de-

liverable to Panhandle under the Eastern Plan in exchange for stock of Eastern.

Columbia Oil further agrees, upon the date of the consummation of the Eastern Plan, to purchase from Panhandle and Panhandle agrees to sell to Columbia Oil the \$800,000 principal amount of Non-Interest-Bearing Promissory Notes of Eastern deliverable to Panhandle under the Eastern Plan in exchange for stock of Eastern. Payment therefor shall be made by Columbia Oil by delivering to Panhandle five promissory notes of Columbia Oil, to the aggregate principal amount of \$800,000, in such denominations as Panhandle may request, each such note to be payable in four equal instalments on March 1, 1935, September 1, 1935, March 1, 1936, and September 1, 1936, or earlier at the option of Columbia Oil, at the principal office of Chemical Bank & Trust Company, 165 Broadway, New York, N. Y., and not to bear interest unless default is made in the due and timely payment of any instalment thereof, in which case it is to bear interest at the rate of 6% per annum from the due date of such instalment; upon default in the payment of any instalment of such note, the holder is to have the right [fol. 129] to accelerate the maturity of the entire note; each such note to be secured by pledge of a like principal amount of the Non-Interest-Bearing Promissory Notes of Eastern so purchased. Columbia Oil further agrees that it will pay any of its said Promissory Notes which may be held by the Receivers of Missouri-Kansas Pipe Line Company, to an aggregate principal amount, however, not exceeding \$200,000, on September 1, 1934, or on any date thereafter which shall be within sixty days after consummation of the Eastern Plan, at a discount of 25% of the principal amount thereof, provided that thirty days' prior notice of intention to present such notes for payment shall have been given by said Receivers to Columbia Oil at said office of Chemical Bank & Trust Company and that such notes shall be presented for payment on such date or within ten days thereafter.

Columbia Oil further agrees, after the consummation of the Eastern Plan, to cause Eastern to withdraw all claims theretofore filed by Eastern against the receivership estate of Missouri-Kansas Pipe Line Company and to execute good and sufficient releases of such claims.

5. Columbia Oil, Panhandle, and Eastern shall severally bear all expenses, including taxes and counsel fees, incurred

by them, respectively, in connection with carrying out this agreement and the consummation of the Eastern Plan.

6. All legal matters in connection with the carrying out of the Eastern Plan and this agreement shall be subject to the approval of the respective counsel for Columbia Oil and Panhandle.

7. Neither party shall be under any obligation hereunder unless both Panhandle and Columbia Oil shall have assented [fol. 130] or shall have become obligated hereunder to assent to the Eastern Plan in accordance with the terms hereof on or before June 30, 1934, or such later date as may be agreed upon by Panhandle and Columbia Oil.

In Witness Whereof, the parties hereto have caused this agreement to be executed as of the day and year first above written.

Columbia Oil & Gasoline Corporation, by E. Reynolds, Jr., Vice President.

Attest: H. H. Fell, Jr., Assistant Secretary. (Seal.)

Panhandle Corporation, By J. H. Hillman, Jr., President.

Attest: H. F. Reindel, Secretary. (Seal.)

[fol. 131] EXHIBIT "F" TO PETITION

Offer of Exchange, Dated June 19, 1935, of Columbia Oil & Gasoline Corporation, to Holders of Two-Year 6% Collateral Trust Notes of Panhandle Corporation

Revised Plan of Readjustment of Funded Debt and Capitalization, Dated June 19, 1935, of Panhandle Eastern Pipe Line Company

Columbia Oil & Gasoline Corporation,
61 Broadway, New York, June 19, 1935.

Offer of Exchange

To the Holders of the Two-Year 6% Collateral Trust Notes of Panhandle Corporation:

The above-named Notes of Panhandle Corporation (herein called the "Panhandle Notes"), which are outstand-

ing in the principal amount of \$4,940,000, matured by their terms on March 15, 1933. We are advised that holders of approximately 98% of such Panhandle Notes consented to an extension of maturity to March 15, 1934. The principal of the Panhandle Notes is unpaid and interest thereon is [fol. 132] unpaid from September 15, 1933. The Panhandle Notes are guaranteed by Missouri-Kansas Pipe Line Company, which is in receivership.

There is attached hereto a balance sheet, as at May 15, 1935, of Panhandle Corporation, certified by D. G. Sister-son & Co., certified public accountants. This indicates that the Panhandle Notes constitute the only funded indebtedness of Panhandle Corporation and are secured by pledge of \$4,945,500 principal amount of 6% Promissory Notes (subordinated), due October 2, 1950, and 114,900 shares of Common Stock of Panhandle Eastern Pipe Line Company, a Delaware corporation (herein called "Eastern"), and that such latter Notes and stock constitute substantially all of the assets of Panhandle Corporation. The balance sheet also indicates that no interest has been received by Panhandle Corporation on the Notes of Eastern held by it since September 2, 1933, and that Panhandle Corporation is without funds with which to pay its Notes.

Panhandle Eastern Pipe Line Company (Eastern).—The outstanding funded debt and capital stock of Eastern, all of which is owned by Panhandle Corporation and by Columbia Oil & Gasoline Corporation (herein called "Columbia Oil") are as follows:

	Owned by Panhandle	Owned by Columbia Oil
Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds").....	None	\$18,500,000
6% Promissory Notes (subordinated), due October 2, 1950 (herein called "Eastern Notes").....	\$4,945,500	\$4,945,500
Common Stock.....shares	114,900	114,900

[fol. 133] A consolidated balance sheet, as at December 31, 1934, of Eastern and its subsidiaries, and consolidated income accounts and summary of consolidated surplus accounts of Eastern and its subsidiaries for the years ended December 31, 1932, December 31, 1933, and December 31, 1934, certified by Messrs. Arthur Andersen & Co., certified public accountants, are attached as Schedule A to the Revised Plan of Readjustment of Funded Debt and Capitalization of Eastern attached hereto.

Plan of Readjustment of Eastern.—In March 1934 the Board of Directors of Eastern adopted a Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934, designed to reduce the fixed charges of Eastern and avoid a receivership of Eastern and a foreclosure of the mortgage securing the Existing Eastern Bonds, and Panhandle Corporation made an offer of exchange dated March 12, 1934 to its Noteholders. Such plan and offer were not consummated because some of the conditions precedent to the plan could not be met. The necessity for the readjustment of Eastern, however, still exists and accordingly a Revised Plan of Readjustment of Funded Debt and Capitalization of Eastern, dated June 19, 1935 (herein called the "Eastern Plan"), has been adopted by its Board of Directors. A copy thereof is attached hereto, and reference is made thereto for a complete statement of its terms.

The treatment accorded by the Eastern Plan to the outstanding securities of Eastern may be summarized as follows:

[fol. 134]

Existing Securities	Securities to be Received under Plan
\$18,500,000 ¹ Existing Eastern Bonds held by Columbia Oil.	\$18,500,000 ¹ Modified Eastern Bonds.
\$4,945,500 Eastern Notes, and 114,900 shares Eastern Common Stock held by Columbia Oil.	\$800,000 Promissory Notes of Eastern, due September 1, 1937, and one-half of the Eastern Capital Stock of each class.
\$4,945,500 Eastern Notes, and 114,900 shares Eastern Common Stock held by Panhandle Corporation.	\$800,000 Promissory Notes of Eastern, due September 1, 1937, and one-half of the Eastern Capital Stock of each class.

¹ Subject to reduction prior to consummation of the Eastern Plan by operation of the sinking fund.

The agreement of Columbia Oil to assent to the Eastern Plan is conditioned among other things upon the acquisition by Columbia Oil of at least 97% (or such lesser percentage as Columbia Oil may determine) of the outstanding Panhandle Notes and of at least 750 of the 1,000 shares of the outstanding capital stock of Panhandle Corporation. Columbia Oil has made an offer to the holders of said stock for the acquisition thereof if and when the Eastern Plan is consummated.

Offer of Exchange

Columbia Oil hereby offers, subject to the conditions set forth below, to the holders of Panhandle Notes, the right

to exchange such Panhandle Notes for Modified Eastern Bonds at the rate of \$750 principal amount of Modified Eastern Bonds for each \$1,000 principal amount of Panhandle Notes, with the interest adjustment provided for below. For a statement of the terms of such Modified Eastern Bonds and a description of the security therefor reference is made to the Eastern Plan attached hereto and to Schedule B thereof.

[fol. 135] Payment of Interest.—Upon acceptance of this Offer by the holders of at least 97% (or such lesser percentage as Columbia Oil may approve) of the outstanding Panhandle Notes, and without awaiting the consummation of the Eastern Plan and the exchange contemplated by this Offer, Columbia Oil will pay to the holders who accept this Offer twelve (12) months' interest on their Panhandle Notes, against an assignment to Columbia Oil of the Panhandle Noteholders' claims to such interest.

Upon the consummation of the Offer of Exchange and Eastern Plan, Columbia Oil is to pay to the holders of Panhandle Notes who accept this Offer the remaining six (6) months' interest accrued to March 15, 1935, on their Panhandle Notes, together with any interest accrued after March 2, 1935, and collected by Columbia Oil on the Modified Eastern Bonds to be delivered in exchange therefor, so that in effect such holders will receive interest upon their Panhandle Notes to March 15, 1935, and upon the Modified Eastern Bonds delivered in exchange therefor from March 2, 1935.

Conditions to Carrying Out of the Offer.—The carrying out of the exchange of securities contemplated by this Offer is conditioned upon the following:

(a) The acceptance of the Offer by the holders of at least 97% (or such lesser percentage as Columbia Oil may determine) of the outstanding Panhandle Notes within such period of time as Columbia Oil may determine;

(b) The termination of an anti-trust suit brought by the United States against Columbia Oil, Columbia Gas & Electric Corporation, and certain individual defendants in the United States District Court for the District of Delaware, in such manner that Columbia Oil shall not be required to divest itself of its holdings of Eastern securities; in such suit it is alleged among other things that the acquisition by Columbia Oil of the securities of Eastern

now held by it was in violation of the Anti-Trust Laws of the United States and it is prayed among other things that Columbia Oil be directed to divest itself of the ownership of these securities; and

(c) The consummation of the Eastern Plan.

Directors of Eastern.—Four of the present eight directors of Eastern were nominated by Columbia Oil, namely Burt R. Bay (President of Eastern), James L. Harrop (Vice President and Director of Columbia Oil), Charles A. Munroe (President, Director, and Voting Trustee of Columbia Oil), and William P. Philips (Director and Voting Trustee of Columbia Oil). The other four directors were nominated by Panhandle Corporation, namely, Joseph A. Bower (Executive Vice President and Director of Chemical Bank & Trust Company), J. H. Hillman, Jr. (President and Director of Pennsylvania Industries, Inc.), Dean Mathey (Dillon, Read & Co.), and H. F. Reindel (Cotton, Franklin, Wright & Gordon). In the event of the consummation of the Eastern Plan, it is contemplated that the latter four directors will resign. Columbia Oil is the owner of certain of the Eastern securities. Chemical Bank & Trust Company and Dillon, Read & Co. are owners of Panhandle Notes. J. H. Hillman, Jr., is an officer and/or Director and/or stockholder of various corporations which are [fol. 137] owners of Panhandle Notes and/or Panhandle stock. Cotton, Franklin, Wright & Gordon are counsel for Panhandle Corporation.

Method of Acceptance by Holders of Panhandle Notes.—The holders of approximately 98% of the outstanding Panhandle Notes have heretofore accepted the offer of Panhandle Corporation, dated March 12, 1934, and have deposited their Panhandle Notes with Chemical Bank & Trust Company. Such holders who desire to accept this Offer should send to Chemical Bank & Trust Company, Corporate Trust Department, 165 Broadway, New York, N. Y., the enclosed letter of Transmittal and Power of Attorney properly executed, with signature guaranteed as therein indicated, authorizing Chemical Bank & Trust Company to accept this Offer and, upon consummation of this Offer and the Eastern Plan, to deliver the Panhandle Notes now held by Chemical Bank & Trust Company for such holder to Columbia Oil against delivery to Chemical Bank & Trust Company for account of such Note holders of the Modified

Eastern Bonds and interest called for by the Offer. The holders of Panhandle Notes who desire to accept the above Offer and who have not accepted the offer of Panhandle Corporation, dated March 12, 1934, should deliver their Notes to Chemical Bank & Trust Company, with the March 15, 1934 coupons attached, accompanied by the enclosed Letter of Transmittal and Power of Attorney properly executed, with signature guaranteed as above. Such Letters of Transmittal and Power of Attorney also authorize and direct Chemical Bank & Trust Company, upon payment by [fol. 138] Columbia Oil of the amount of the twelve (12) months' interest to September 15, 1934, upon the Panhandle Notes thus surrendered, to detach and deliver to Columbia Oil the interest coupons thereto appertaining maturing March 15, 1934, and to assign to Columbia Oil the six (6) months' interest accruing on such Notes from March 15, 1934, to September 15, 1934, and to stamp such Notes with an appropriate notation of such assignment and to distribute the monies received from Columbia Oil to the Panhandle Noteholders entitled thereto.

All transfer taxes payable with respect to the exchange contemplated by this Offer are to be paid by Columbia Oil.

Should this Offer and the Eastern Plan not be carried out in accordance with their respective terms on or before December 31, 1936, the depositors of Panhandle Notes will be entitled to the return of the deposited Panhandle Notes without expense to them.

The above Offer, unless extended, will expire at the close of business on July 20, 1935.

Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President.

[fol. 139] PANHANDLE CORPORATION BALANCE SHEET AT MAY 15, 1935 .

ASSETS

Securities and Cash—Pledged with Chemical Bank & Trust Company, Trustee, to Secure Payment of Corporation's Two-Year 6% Collateral Trust Notes:

Cash on Deposit with Trustee.....	\$4,886.81
-----------------------------------	------------

Securities of Panhandle Eastern Pipe Line Company:

6% Promissory Notes, due October 2, 1950 (at Cost) (Interest from September 2, 1933 in default).....	\$4,945,500.00
--	----------------

Accrued Interest (September 2, 1933 to May 15, 1935).....	505,256.25
---	------------

5,450,756.25

114,900 shares Capital Stock (Voting Trust Certificates) ..	10,244,209.15
---	---------------

Of the above stock, 5,000 shares were received in exchange for 1,000 shares of Panhandle Corporation, and were valued by the Directors at the time of acquisition at the value shown on October 31, 1930, on the books of Panhandle Eastern Pipe Line Company. This value was subsequently written down by order of the Directors to reflect a corresponding write-down of assets of Panhandle Eastern Pipe Line Company made by that corporation on its books in March 1932, 109,900 shares were acquired for cash at \$5.00 per share.

Total Assets Pledged with Trustee.....	15,699,852.21
Cash	160.28
	<u>15,700,012.49</u>

LIABILITIES

Two-Year 6% Collateral Trust Notes, Due March 15, 1933:

Principal Amount.....	\$4,940,000.00	
Accrued Interest (September 15, 1933 to May 15, 1935).....	494,000.00	
		5,434,000.00

Consent was requested from the holders thereof for the extension of these Notes for one year to March 15, 1934. On March 12, 1934, an Offer of Exchange was made to the holders. Holders of approximately 98% of these Notes assented to the extension to March 15, 1934, and approxi-

[fol. 140]

mately 98% of these Notes were deposited under the Offer of Exchange of Panhandle Corporation, dated March 12, 1934.

We are informed that, due to a decision of the Court of Chancery of the State of Delaware, the Offer of Exchange, dated March 12, 1934, has been abandoned, and a new Offer of Exchange will presently be submitted to the Noteholders by Columbia Oil & Gasoline Corporation.

Other Liabilities:

Notes Payable:

Secured by deposit of 700 shares Preferred Stock and 350 shares Common Stock of Kentucky Natural Gas Corporation borrowed from Missouri-Kansas Pipe Line Co.....	\$23,530.00	
Unsecured Demand Notes.....	42,033.20	
	65,563.20	
Accrued Interest on Notes Payable.....	9,116.09	
	74,679.29	
Accounts Payable.....	76,231.22	
		\$150,910.51

Missouri-Kansas Pipe Line Company:

Securities Borrowed—Pledged as collateral with Notes Payable (as above)—700 shares Preferred Stock and 350 shares Common Stock of Kentucky Natural Gas Corporation.....

—0—

Capital Stock:

Authorized and Outstanding: 1,000 shares of a par value of \$10.00 per share.....	<u>\$10,000.00</u>
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Capital Surplus:

Through valuation of Panhandle Eastern Pipe Line Company Stock.....	9,684,709.15	
Paid-in Capital.....	637,879.95	
	<u>10,322,589.10</u>	
	10,332,589.10	
Operating Deficit.....	<u>217,487.12</u>	
		10,115,101.98
		15,700,012.49

We have audited the accounts and records of Panhandle Corporation, a Maryland corporation, and certify that, in our opinion, the above Balance Sheet correctly sets forth the financial condition of the Company at May 15, 1935.

Pittsburgh, Pa.
May 31, 1935.

D. G. SISTERTON & COMPANY,
Certified Public Accountants.

[fol. 141] Panhandle Eastern Pipe Line Company—Revised Plan of Readjustment of Funded Debt and Capitalization

Dated, June 19, 1935.

The Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company (herein called "Eastern") dated March 12, 1934, was not consummated because certain conditions precedent to such plan could not be met.

The necessity for the readjustment of Eastern, set forth in the plan of March 12, 1934, still exists and consequently Eastern has revised such plan and offers this revised plan (herein called the "Plan") to its security holders.

I

Condition of the Company

The funded debt and capitalization of Eastern are as follows:

Twenty-Year Sinking-Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds")...	\$18,500,000
6% Promissory Notes, due October 2, 1950 (herein called "Eastern Notes").....	\$9,891,000
Common Stock, without par value.....shares..	229,800

There are attached hereto, as Schedule A, a consolidated balance sheet of Eastern and its subsidiaries, as at December 31, 1934, and consolidated income accounts and summary of consolidated surplus accounts of Eastern and its subsidiaries for the years ended December 31, 1932, Decem-

ber 31, 1933, and December 31, 1934, certified by Messrs. Arthur Andersen & Co., certified public accountants.

Interest payments upon the Existing Eastern Bonds have been made as such payments became due. The semiannual [fol. 142] sinking fund upon the Existing Eastern Bonds payable on February 18 and August 21 of each year and amounting to \$315,000 has been paid to and including the instalment due February 18, 1935, and an aggregate of \$1,500,000 of Existing Eastern Bonds have been retired through operation of such sinking fund, \$900,000 principal amount having been retired since December 31, 1934, at the redemption price of 105% and interest.

The semi-annual interest instalment upon the Eastern Notes due on March 2, 1934, and subsequent instalments have not been paid.

II

Capitalization of Eastern Upon Consummation of the Plan

The funded debt and capitalization of Eastern, as at June 19, 1935, but adjusted to give effect to the consummation of the Plan, are as follows:

Twenty-Year Mortgage Bonds, Series A, 6%, due October 1, 1950 (herein called "modified Eastern Bonds")	\$18,500,000
Promissory Notes, due September 1, 1937	1,600,000
Capital Stock	(²)

¹ Subject to reduction prior to the consummation of the Plan by operation of the Sinking Fund.

² Such number of shares as may be determined by Eastern, which shares may be entirely of one class or may be divided into common stock and preferred stock with such relative rights as may be determined by Eastern.

The Modified Eastern Bonds above referred to are to be the Existing Eastern Bonds with certain terms thereof and of the Indenture and Supplemental Indenture under which they are issued modified by agreement with the present holders thereof. A description of the terms of the Modified [fol. 143] Eastern Bonds and of the security therefor is set forth in Schedule B.

The Promissory Notes due September 1, 1937, above referred to are to be non-interest bearing until September 1, 1936, and are to bear interest at the rate of 5% per annum for the year ended September 1, 1937.

III

Basis of Readjustment

1. The holders of Existing Eastern Bonds will be entitled, in lieu of their present holdings of Existing Eastern Bonds, to receive and/or retain, upon consummation of the Plan, a like principal amount of Modified Eastern Bonds.

2. The holders of \$9,891,000 principal amount of Eastern Notes and of 229,800 shares of Common Stock of Eastern will be entitled, in lieu of their present holdings of Eastern Notes (including all claims for interest accrued thereon) and Common Stock, to receive and/or retain, in proportion to their respective holdings of such Eastern Notes and Common Stock, upon consummation of the Plan, \$1,600,000 principal amount of Promissory Notes of Eastern, due September 1, 1937, and the entire Capital Stock of Eastern of each class to be outstanding upon consummation of the Plan.

IV

Operation of Sinking Fund Pending Consummation of Plan

The first semi-annual sinking-fund payment on the Modified Eastern Bonds, as described in Schedule B, is to be payable on the first semi-annual sinking-fund payment date after the consummation of the Plan, and in the interim the [fol. 144] sinking fund upon the Existing Eastern Bonds is to operate. Such sinking fund on the Existing Eastern Bonds at present amounts to \$630,000 per year and operates in effect to retire Bonds at their redemption price of 105 and accrued interest. Eastern reserves the right, by agreement with the holder of all of the outstanding Existing Eastern Bonds, to suspend the operation of any portion or all of such sinking fund for the Existing Eastern Bonds which would become payable prior to the consummation of the Plan.

V

Conditions of Consummation of the Plan

Consummation of the Plan shall be conditioned upon the assent by the holders of all the outstanding securities of Eastern to the Plan on or before December 31, 1936.

No commission or other remuneration is to be paid to any person, firm, or corporation as compensation for soliciting assents to this Plan.

Panhandle Eastern Pipe Line Company, by B. R. Bay, President.

SCHEDULE A.—PANHANDLE EASTERN PIPE LINE COMPANY AND
SUBSIDIARY COMPANIES

CONSOLIDATED BALANCE SHEET—DECEMBER 31, 1934

ASSETS

Plant, Property, Contracts, Leaseholds, Etc.:		
Texas to Indiana pipe line system—at cost.....	\$39,707,138.74	
Other wells, leaseholds, pipe lines, compressors, etc.—at cost.....	2,855,618.00	
Gas purchase and sales contracts—at values assigned by the Board of Directors	3,053,391.53	
		\$45,616,148.27
[fol.145]		
Investment in Capital Stock of Subsidiary Companies Not Consolidated:		
Representing 51% ownership, stated at cost (underlying book value \$48,551.24 after deducting abandoned property).....		\$180,239.68
Bond Discount and Expense in Process of Amortization.....		1,601,091.34
Prepaid Accounts and Deferred Charges:		
Property and leaseholds abandoned.....	\$416,398.83	
Prepaid lease rentals and insurance.....	37,215.73	
Other prepaid and unadjusted items.....	86,892.28	
		540,506.84
Special Deposits:		
Sinking fund deposits held by trustee....	1,630,000.00	
Other deposits.....	689.07	
		1,630,689.07
Current Assets:		
Cash in banks and on hand.....	501,473.86	
Demand note, noninterest bearing, of Indiana Gas Transmission Corporation	150,000.00	
Accounts and notes receivable.....	344,222.98	
Materials and supplies, including construction materials, stated at average cost; quantities and condition as reported by management based on periodic physical inventories.....	264,929.92	
		1,260,626.76
		49,829,301.96

LIABILITIES

Capital Stock and Surplus:		
Capital Stock:		
Authorized 230,000 shares without par value; issued and outstanding		
229,800 shares, at declared value..	\$1,199,000.00	
Capital surplus—Paid in.....	19,285,867.47	
	20,484,867.47	
Deduct—Deficit.....	3,354,772.75	
		\$17,130,094.72

[fol.146]

Funded Debt:

Panhandle Eastern Pipe Line Company:

Twenty-Year Sinking Fund Mortgage
Gold Bonds, Series A, 6%, due
October 1, 1950:

Total issued..... \$20,000,000.00
Less—Bonds retired and can-
celed..... ¹600,000.00

¹19,400,000.00

(Sinking fund payments due during
1935 aggregate \$630,000.00.)

6% Promissory Notes, due October
2, 1950..... 9,891,000.00

Panhandle Illinois Pipe Line Company:

Mortgage notes, payable out of pro-
ceeds of gas sales.....

90,594.75

\$29,381,594.75

Deferred Liabilities:

Customers' deposits..... 3,125.00
Other deferred liabilities..... 19,528.26

22,653.26

Current Liabilities (Exclusive of sinking fund
payments noted above):

Accounts payable..... 56,277.12
Due to affiliated companies..... 39,000.00
Interest due on notes..... 593,460.00
Accrued interest..... 487,239.10
Accrued taxes..... 159,487.83

1,335,464.05

Reserves:

Depreciation and amortization..... 1,915,870.59
Uncollectible accounts..... 12,220.09
Other reserves..... 31,404.50

1,959,495.18

49,829,301.96

¹ Company Notation: The sinking-fund deposit of \$630,000 and a sinking-fund payment of \$315,000 due February 18, 1935, have been applied since December 31, 1934, to the retirement of \$900,000 principal amount of Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950.

[fol.147] CONSOLIDATED INCOME ACCOUNTS FOR THE YEARS ENDED DECEMBER 31,
1934, 1933, AND 1932

	Year ended December 31—		
	1934	1933	1932
Gross Earnings:			
Gas Sales.....	\$2,844,934.03	\$2,416,397.62	\$1,788,359.33
Other Revenues.....	203,583.22	168,999.17	124,566.82
Total Gross Earnings....	<u>3,048,517.85</u>	<u>2,585,396.79</u>	<u>1,912,926.15</u>
Operating Expenses and Taxes:			
Operation.....	920,668.14	888,273.35	910,304.38
Maintenance.....	88,901.30	110,831.40	155,070.93
Taxes.....	270,204.00	262,375.23	219,459.98
Total Operating Expenses and Taxes.....	<u>1,279,773.44</u>	<u>1,261,479.98</u>	<u>1,284,835.29</u>

	Year ended December 31—		
	1934	1933	1932
Net Operating Revenues before Provision for Depreciation and Amortization of Gas Rights and Leases...	1,768,744.41	1,323,916.81	628,090.86
Interest Deductions:			
Interest on Funded Debt:			
Twenty - Year Sinking Fund Mortgage Gold Bonds, Series A, 6%...	1,164,000.00	1,177,300.00	1,200,000.00
6% Promissory Notes...	593,460.00	593,460.00	559,473.00
Funded Debt of Subsidiary Companies.....	2,698.18		
Amortization of Debt Discount and Expense.....	119,741.62	102,702.87	104,898.59
Other general interest—Net..	3,788.52	7,142.96	15,884.63
Interest Charged to Construction ¹			456,443.96
Total Interest Deductions	1,876,111.28	1,866,319.91	1,392,043.00
Net Loss before Provision for Depreciation and Amortization of Gas Rights and Leases:	107,366.87	542,403.10	763,952.14
Provision for Depreciation and Amortization of Gas Rights and Leases, as determined by the Companies ²	764,639.89	759,713.24	582,574.44
Net Loss.....	872,006.76	1,302,116.34	1,346,526.58
Net Loss of Main Line Operations for Three Months ended March 31, 1932, Charged to Construction ¹ ..			4,947.16
Net Loss carried to Surplus ² ..	872,006.76	1,302,116.34	1,341,579.39

NOTE—Italics represent red figures.

¹ The period from the inception of the Company to March 31, 1932, has been treated by the Company as the period of construction of the pipe line system and interest, taxes and amortization of debt discount and expenses during this period were capitalized. The total net income in this period (including the three months ended March 31, 1932, for which a loss of \$4,947.19 was sustained) was \$48,604.69, after deducting \$264,072.64 provision for depreciation and amortization of gas rights and leases, but with no deduction for interest, taxes or amortization of debt discount and expenses. Such net income was credited to the cost of construction of the pipe line.

² The company is providing a reserve for the amortization of \$642,286.30 of gas purchase and sales contracts over a period of twenty years. No provision has been made for amortization of the remaining gas purchase and sales contracts, which are carried at \$2,411,105.23. In the Federal income-tax returns deductions for depreciation and amortization are considerably larger than the provisions recorded on the books and shown above.

[fol. 148]

Summary of Consolidated Surplus Accounts for Years Ended December 31, 1934, 1933, and 1932

	Year ended December 31—		
	1934	1933	1932
Earned surplus (deficit) balance beginning of year.....	\$2,492,577.54	\$1,105,754.84	\$234,049.13
Net loss for the year.....	872,006.76	1,302,116.34	1,341,579.93
	3,364,584.30	2,407,871.18	1,107,530.96

	Year ended December 31—		
	1934	1933	1932
Surplus direct credits or charges:			
Unamortized debt discount and expense on bonds retired.....		54,706.36	
Transfer of balance in reserve for contingencies.....	36,002.66		
Premium on bonds retired.....		30,000.00	
Revaluation of investment in Macon Gas and Electric Light Company stock.....	23,487.80		
Miscellaneous (net).....	2,763.31		1,775.42
Earned surplus (deficit) balance end of year ^{1 2}	3,354,772.75	2,492,577.54	1,105,754.84
Capital surplus balance end of year.....	19,285,867.47	19,294,624.55	19,285,867.47

To the Board of Directors, Panhandle Eastern Pipe Line Company:

We have made an examination of the consolidated balance sheet of the Panhandle Eastern Pipe Line Company and subsidiary companies as at December 31, 1934, and of the statement of consolidated income and surplus for the three years ended that date. In connection therewith, we examined or tested accounting records of the companies and other supporting evidence and obtained information and explanations from officers and employees of the companies; we also made a general review of the accounting methods and of the operating and income accounts for the three years, but we did not make a detailed audit of the transactions.

The company has amortized debt discount and expense on a straight-line basis, which method does not give expression to the retirement of bonds through the operations of the sinking fund. Unamortized debt discount and expense of \$54,706.36 applicable to bonds retired through the operations of the sinking fund during 1933, together with premium paid of \$30,000.00, has been charged direct to surplus by the company.

Subject to the comments in the preceding paragraph, and to the adequacy of the annual provisions and reserve for depreciation and amortization of gas rights and leases, in our opinion, based upon the examination referred to above, the foregoing consolidated balance sheet and related statement of income and surplus fairly present, in accordance with accepted principles of accounting consistently maintained by the companies for the three years under review, the financial position of the companies at December 31,

1934, and the results of their operations for the three years ended that date.

Arthur Andersen & Co., Certified Public Accountants.

Kansas City Mo., June 19, 1935.

Schedule B.—Provisions of Modified Eastern Bonds Upon Consummation of Eastern Plan

The Modified Eastern Bonds are to be the Existing Eastern Bonds presently outstanding, modified so that the terms thereof will conform to the terms as herein set forth. The Existing Eastern Bonds are outstanding as Bonds of Series A under the Mortgage Trust Indenture, dated as of October 1, 1930 (as supplemented and amended by a Supplemental Indenture, dated as of March 27, 1931), of Panhandle Eastern Pipe Line Company to City Bank Farmers [fol. 150] Trust Company (herein referred to as the Trustee) and James M. Kemper (successor to Walter Scott McLucas), as Trustees. Such Indenture is to be modified by the execution of a Second Supplemental Indenture so as to conform to the terms and provisions herein set forth with such other changes in the Indenture as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation (the Indenture, as modified by the Supplemental Indenture and as to be modified by the Second Supplemental Indenture being herein referred to as the "Amended Indenture"). The Modified Eastern Bonds may be Bonds whose text conforms to the modifications herein provided for or Existing Eastern Bonds stamped with a notation of such modifications and of the execution of such Second Supplemental Indenture. Subject to the provisions hereof and of the foregoing Plan, the Modified Eastern Bonds and Amended Indenture shall be in such form and have such terms as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation.

The following is a summary of the terms of the Modified Eastern Bonds and a description of the security therefor:

1. **Date and Form.**—The Modified Eastern Bonds shall be known as Twenty-Year Mortgage Bonds, Series A, 6%. They shall be dated as of October 1, 1930, and shall mature October 1, 1950; they shall be coupon Bonds, registerable as to principal, in denominations of \$1,000, \$500, and \$250

or any multiple of \$1,000. Bonds of any denomination other than \$1,000 shall be exchangeable for an equal aggregate [fol. 151] principal amount of Bonds of the denomination of \$1,000.

2. Interest and Sinking Fund.—The Modified Eastern Bonds shall bear interest at the rate of 6% per annum, payable semi-annually on April 1 and October 1 of each year.

The Modified Eastern Bonds are to be entitled to an annual Sinking Fund, payable in two equal instalments (as nearly as may be) on or before February 18 and August 21 of each year, which annual Sinking Fund shall amount to—

(a) one-half of such portion of the consolidated earnings of Eastern and its subsidiaries for the preceding calendar year, after all charges other than depreciation and depletion as are actually appropriated for depreciation and depletion by the Board of Directors, plus

(b) the amount of consolidated net earnings of Eastern and its subsidiaries for such preceding year, after all charges including depreciation and depletion; provided that the compulsory Sinking Fund in any year shall not exceed an amount sufficient to redeem \$600,000 principal amount of Modified Eastern Bonds at the then prevailing redemption price. In the event that any Modified Eastern Bonds are issued under the Amended Indenture in addition to the \$18,500,000 thereof to be outstanding upon consummation of the Plan, such maximum compulsory Sinking Fund shall thereafter be increased in the proportion borne by the principal amount of such additional Bonds to \$20,000,000 (being the principal amount of Existing Eastern Bonds originally outstanding). The first semi-annual Sinking Fund payment on the Modified Eastern Bonds shall be [fol. 152] payable on the first semi-annual Sinking Fund payment date after the consummation of the Plan and shall amount to one-half of the annual Sinking Fund which would be payable under the above provisions on the basis of the previous year's operations.

At the option of Eastern, the Modified Eastern Bonds and the Amended Indenture may provide, in lieu of the Sinking Fund above provided for, for an annual Sinking Fund in an amount sufficient to redeem \$600,000 principal amount of Modified Eastern Bonds at the then prevailing redemption price, payable one-half on or before February 18 and one-half on or before August 21 in each year, and subject

to increase upon issue of additional Modified Eastern Bonds in the proportion above indicated.

The amount paid into the Sinking Fund shall be applied by the Trustee to the purchase of Bonds as follows: The Trustee shall advertise for tenders by publishing a call for such tenders once a week for four successive weeks in a daily newspaper, published and of general circulation in the Borough of Manhattan, City of New York, the first publication to be not more than five days after the date of payment of the Sinking Fund, and by mailing a copy of such call to Bondholders who have filed their address with the Trustee for such purpose. All tenders shall be opened by the Trustee on the date announced in such call which shall be not less than thirty and not more than thirty-five days after the first publication of such call, and the Trustee shall accept the lowest tenders thus made, to the extent necessary to exhaust the Sinking Fund, provided that the [fol. 153] Trustee shall not purchase Bonds at a price in excess of the then prevailing redemption price. Any moneys in the Sinking Fund not so expended shall be applied by the Trustee to the redemption of Bonds at the then prevailing redemption price.

Eastern may increase any Sinking Fund payment over the amount above required to be paid or may make payments into the Sinking Fund, in addition to those above required to be made, on other than Sinking Fund payment dates, such moneys to be applied by the Trustee to the retirement of Bonds, after advertisement for tenders, as above provided; any such additional payment into the Sinking Fund shall be credited against Eastern's obligation with respect to succeeding Sinking Fund instalments. Eastern shall not, however, have the right to tender Bonds to the Trustee for sale to the Sinking Fund.

3. Place of Payment. Tax Provisions.—The Modified Eastern Bonds shall be payable both as to principal and interest at the principal office of the Trustee in New York City. Interest on the Modified Eastern Bonds shall be payable without deduction for any Federal income tax not in excess of two per cent thereof which Eastern or the Trustee may be required or permitted to pay thereon or to retain therefrom under any present or future law of the United States. Eastern is to reimburse the owner of any Modified Eastern Bonds residing in Pennsylvania for the Pennsylvania Four Mills Tax

assessed and paid with respect to such Bonds and is to reimburse any such owner residing in Wisconsin the amount of any Wisconsin income tax, not in excess of 6% of the [fol. 154] interest received on such Bonds in any year, assessed and paid with respect to such interest.

4. Redemption of Bonds.—The Modified Eastern Bonds shall be redeemable in whole or in part, at the option of Eastern or for the Sinking Fund, at any time upon thirty days' prior published notice, on or before October 1, 1945, at 105; thereafter and on or before October 1, 1946, at 104; thereafter and on or before October 1, 1947, at 103; thereafter and on or before October 1, 1948, at 102; thereafter and on or before October 1, 1949, at 101; and thereafter until maturity at 100; plus accrued interest at the rate of 6% per annum in each case.

5. Security.—The Modified Eastern Bonds will be secured by a lien (through direct mortgage or by the pledge of demand mortgages, indebtedness and capital stock of subsidiaries, as indicated below) upon the Panhandle Eastern Pipe Line System owned by Eastern directly or through subsidiaries and extending from the Panhandle District of Texas through the States of Texas, Oklahoma, Kansas, Missouri, and Illinois to the Illinois-Indiana State line. The Pipe Line System includes the main line (owned entirely by Eastern except for the portion crossing the State of Illinois, which is owned by Panhandle Illinois Pipe Line Company, a wholly owned subsidiary), ranging from twenty to twenty-four inches in diameter and having a length of more than 850 miles; together with lateral transmission lines (owned by Eastern and Panhandle Illinois Pipe Line Company) extending to the communities served from the main pipe line, field, and gathering lines (owned by Eastern) in the producing areas in Texas, Oklahoma, and south-[fol. 155] western Kansas, the natural-gas production from approximately 177,393 acres (controlled through leases or otherwise by Texas-Interstate Pipe Line Company, a wholly owned subsidiary of Eastern), of which about 12,409 acres are operated, and a one-half interest in the natural-gas production from approximately 28,895 acres (similarly controlled), of which about 6,159 acres are operated.

The Pipe Line System is to be subject to the lien of the Amended Indenture by a direct mortgage on that part of the System owned directly by Eastern and by the pledge

of the entire capital stock and indebtedness (except indebtedness secured by lien on newly acquired property existing or created at the time of acquisition thereof and except current liabilities) of Panhandle Illinois Pipe Line Company and Texas-Interstate Pipe Line Company. Indebtedness of these two subsidiaries in excess of \$500,000 must be represented, so far as legally permissible, by mortgage bonds which by their terms are to be payable on demand and are to bear interest, on a cumulative basis, only to the extent earned. The covenant of Eastern, now contained in the Indenture, to mortgage certain after-acquired property is to be modified so as to exclude after-acquired tangible personal property and the covenant of Eastern to record the Indenture as a chattel mortgage is to be omitted from the Amended Indenture.

The total cost of construction completed to April 1, 1932, of the Pipe Line System which is to be subject to the lien of the Amended Indenture, as certified by Messrs. Brokaw, Dixon, Garner & McKee, Geologists and Petroleum Engineers, and by Messrs. Arthur Andersen & Co., certified public [fol. 156] accountants, by certificates dated June 1, 1932, was \$39,099,745.31.

Eastern and certain of its subsidiaries own production, transmission, and distribution properties in the vicinity of Kansas City, known as the "local area properties", and certain distribution plants adjacent to the main pipe line, which properties are not now subject to the lien of the Indenture. These properties are not to be subject to the lien of the Amended Indenture.

Articles Seventh and Eighth of the Indenture are to be omitted from the Amended Indenture and the covenants of Eastern therein contained are to be waived. Under the terms of these Articles funds for the construction of the present pipe line were deposited with the Trustee and Eastern covenanted that if the pipe line should cost less than \$40,000,000 it would either invest the difference in property subject to the lien of the Indenture or retire Series A Bonds to such an extent that the cost of the pipe line should be at least twice the principal amount of Series A Bonds outstanding.

6. Issue of Additional Bonds.—Additional Bonds, over and above the \$18,500,000 principal amount of Modified Eastern Bonds (Series A) presently to be outstanding, may

be issued under the Amended Indenture in one or more series, at such interest rates, with such redemption terms and with such other provisions (within the limitations to be set forth in the Amended Indenture) as the Board of Directors may from time to time determine. The Amended Indenture will provide, in substance, that subject to the [fol. 157] limitations to be contained therein, such additional Bonds may be issued for the following purposes, among others: (1) for the refunding, acquisition, or retirement of Bonds of any series or of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company (i.e., a company at least 95% of whose equity stock is owned by Eastern and pledged under the Amended Indenture), par for par; (2) in principal amounts not exceeding 50% of the cost or fair value of additional fixed assets acquired or constructed by Eastern, or by any pledged company, or of equity stock of any pledged company acquired by Eastern, subsequently to December 31, 1933, with certain limitations (to be set forth in the Amended Indenture) upon the issue of Bonds against the acquisition or construction of additional fixed assets subject to existing liens or against the acquisition of equity stock subject to prior charges on assets; or (3) to provide cash to be deposited with the Trustee to be withdrawn for one or more of the foregoing purposes; provided, however, that no additional Bonds may be issued for any purposes except those set forth in (1) above unless consolidated net earnings of Eastern and its subsidiaries, after depreciation and depletion, available for interest (as to be defined in the Amended Indenture), during twelve consecutive months ended not more than 90 days prior to the date of issuance of such additional Bonds shall have been not less than one and three-fourths times the consolidated annual charges on consolidated funded indebtedness (as to be defined in the Amended Indenture) to be outstanding immediately after [fol. 158] the issuance of such additional Bonds.

7. Release of Mortgaged or Pledged Property.—The Amended Indenture is to provide for the release of mortgaged property or pledged securities or indebtedness, when no longer needed in the business of Eastern, only (except in the case of surrender of leases of gas acreage or releases of property not exceeding \$5,000 in value in any one year) if such property or securities or indebtedness have been sold or exchanged for not less than their fair value, as deter-

mined by the Board of Directors of Eastern or taken by right of eminent domain; the proceeds of such sale or exchange, if in the form of property or securities, must be subjected to the lien of the Amended Indenture, or, if in the form of cash, must be deposited with the Trustee. Cash so deposited may be withdrawn (1) to reimburse Eastern or any pledged company for 100% of the cost or fair value of additional fixed assets acquired or constructed by it subsequent to December 31, 1933; (2) to reimburse Eastern for the cost or fair value of equity stock of any pledged company acquired by it subsequent to December 31, 1933; (3) for the retirement of Bonds of any series by purchase (in the case of Series A Bonds, through the Trustee which is to call for tenders as in the case of the Sinking Fund) or by redemption; or (4) for the acquisition or retirement of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company. If more than one series of Bonds is outstanding, any proceeds of released property applied to the retirement of Bonds [fol. 159] shall be divided among the various series in proportion to the principal amount of Bonds of each series outstanding. Proceeds of insurance aggregating \$25,000 or more must be deposited with the Trustee and may be withdrawn for similar purposes or to reimburse Eastern for the cost of repairs or replacements.

[fol. 160] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS COLUMBIA GAS & ELECTRIC CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, THOMAS R. WEYMOUTH, THOMAS B. GREGORY AND EDWARD REYNOLDS, JR., TO AMENDED AND SUPPLEMENTAL PETITION—Filed January 29, 1936

And Now Come Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr.; each being one of the defendants in the above-named cause, and answer the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

1. They admit the allegations of Paragraphs 1 and 2 of the petition.

2. They admit the allegation of Paragraph 3 of the petition that the defendant Columbia Gas & Electric Corporation has an office in the City of New York, New York, but they deny that it has a principal office and place of business in said City, and they deny, on information and belief, that Columbia Oil & Gasoline Corporation has a principal office and place of business in said City.

3. They admit the allegations of Paragraphs 4 and 5 of the petition.

4. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 6 of the petition.

5. They admit the allegations of Paragraphs 7 and 8 of the petition.

[fol. 161] 6. They deny the allegation of Paragraph 9 of the petition and allege that Edward Reynolds, Jr., is a resident of the City of Stamford, Connecticut.

7. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 10 and 11 of the petition.

8. They deny the allegations of Paragraph 12 of the petition except that they admit that the individuals referred to are citizens of the United States and that, during the following respective periods, the following thereof have been

(a) voting trustees of the common stock of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
Phillip G. Gossler	10/23/30—7/19/35.
George H. Howard	10/23/30—7/19/35

(b) directors of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
George H. Howard	10/23/30—11/ 4/31
Phillip G. Gossler	10/23/30— 5/26/31
Charles A. Munroe	10/23/30—11/30/31
	and
	5/ 5/32—present
Thomas R. Weymouth	11/30/31— 4/24/35
Thomas B. Gregory	3/ 9/31— 4/24/35
Edward Reynolds, Jr.	5/26/31— 5/ 5/32
Burt R. Bay	5/26/33—present
John H. Hillman, Jr.	3/14/32—present

(c) officers of said Panhandle Eastern Pipe Line Company, to-wit:

Name	Position	Period
Edward Reynolds, Jr.	Vice-President	11/25/30—3/4/35
Edward Reynolds, Jr.	Secretary	10/23/30—3/4/35
Burt R. Bay	Vice-President	1/ 2/30—5/26/33
Burt R. Bay	President	5/26/33—present

[fol. 162] (d) directors of Columbia Gas & Electric Corporation, to-wit:

Name	Periods
George H. Howard	11/ 6/30— 1/31/35
Philip G. Gossler	10/ 1/26—present
Charles A. Munroe	1/ 4/29— 6/ 7/34
Thomas B. Gregory	10/ 1/26—present
Edward Reynolds, Jr.	9/11/34—present

(e) Officers of Columbia Gas & Electric Corporation, to-wit:

Name	Position	Period
Philip G. Gossler	President	10/ 4/26—present
Thomas R. Weymouth	Vice-President	4/9/31—present
Thomas B. Gregory	Vice-President	10/ 4/26—present
Edward Reynolds, Jr.	Vice-President	4/12/28—present
Edward Reynolds, Jr.	Secretary	10/ 4/26—4/ 4/35
Edward Reynolds, Jr.	Treasurer	10/ 4/26—4/12/28

(f) directors of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/14/30—5/22/31
Charles A. Munroe	5/14/30—present
Thomas B. Gregory	5/14/30—6/ 7/34

(g) officers of Columbia Oil & Gasoline Corporation, to-wit:

Name	Position	Period
Philip G. Gossler	President	5/15/30—5/22/31
Charles A. Munroe	President	5/22/31—present
Thomas R. Weymouth	Vice-President	4/ 9/31—6/ 7/34
Thomas B. Gregory	Vice-President	5/15/30—6/ 7/34
Edward Reynolds, Jr.	Vice-President	5/15/30—3/ 4/35
Edward Reynolds, Jr.	Secretary	5/15/30—6/ 7/34

(h) voting trustees of the common stock of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/15/30—5/22/31
Charles A. Munroe	5/22/31—present
Thomas B. Gregory	6/16/32—6/ 7/34

9. They deny the allegations of Paragraph 13 of the petition except that they admit that Columbia Gas & Electric

[fol. 163] Corporation is a holding company owning stocks and other securities of approximately 60 subsidiaries and except that they admit that said Columbia Gas & Electric Corporation has exercised its voting rights in the stock of the separate corporations owned by it (such thereof as are natural gas distributing corporations being each subject to regulation by the public authorities of the state in which such corporation distributes natural gas) and except that they admit that such corporations engaged in the natural gas business have integrated their respective systems by interconnecting pipe lines so that natural gas may be delivered by one corporation to another and thus form what may be broadly termed a single operating unit or system, which is sometimes referred to as Columbia System. They further admit that its said subsidiaries are, for convenience of description and economy of operation among themselves, divided into seven groups substantially as set out in said Paragraph 13 of the Petition.

10. They deny the allegations of Paragraph 14 of the petition except that they admit that Columbia Oil & Gasoline Corporation is a corporation of the State of Delaware, that it was organized by Columbia Gas & Electric Corporation, that all of its first preferred stock and all of its second preferred stock are owned by Columbia Gas & Electric Corporation and that all of its common stock has been deposited under a Voting Trust Agreement and Voting Trust Certificates were, on June 30, 1930, distributed to holders of record as of May 24, 1930 of the Common Stock of Columbia Gas [fol. 164] & Electric Corporation. They deny that Columbia Oil & Gasoline Corporation was organized to "hold" any properties of Columbia System in the sense connoting the retention by Columbia Gas & Electric Corporation of any beneficial ownership in such properties, or that any substantial gas producing properties (other than properties producing casinghead gas incidentally to oil operations) were transferred to Columbia Oil & Gasoline Corporation.

11. They deny the allegations of Paragraph 15 of the petition except that they admit that the said subsidiaries of Columbia Gas & Electric Corporation do operate in parts of the States of Indiana, Ohio, West Virginia, Kentucky, Pennsylvania, New York and Virginia; and they further admit that in the State of Ohio some of its subsidiaries operate under non-exclusive franchises lawfully granted by

duly constituted public authorities and at rates of service fixed by duly constituted public authorities.

12. They deny, on information and belief, the allegations of Paragraph 16 of the petition except that they admit that Missouri-Kansas Pipe Line Company was organized under the laws of the State of Delaware in 1928 for the alleged purpose of producing, transporting, distributing and selling natural gas; that in 1929 Panhandle Eastern Pipe Line Company was organized under the laws of the State of Delaware; and that Missouri-Kansas Pipe Line Company became the owner of the entire capital stock of said corporation.

13. They deny the allegations of Paragraph 17 of the petition.

14. They deny the allegations of Paragraph 18 of the petition except that they admit that on or about June 20, [fol. 165] 1930 the defendant Columbia Oil & Gasoline Corporation entered into an agreement with Missouri-Kansas Pipe Line Company, substantially in the form of Exhibit A to the Petition, but deny that the effect of said agreement is such as is alleged in said Paragraph 18. These defendants deny that said agreement was by its terms to expire on August 5, 1930, and allege that said agreement by its terms was not to be binding on either party unless Missouri-Kansas Pipe Line Company should, by August 5, 1930, furnish Columbia Oil & Gasoline Corporation with certain information, which information was essential to enable Columbia Oil & Gasoline Corporation to determine whether or not the representations on the part of Missouri-Kansas Pipe Line Company contained in said agreement were true and accordingly to enable Columbia Oil & Gasoline Corporation to determine whether or not it was required to consummate agreement. They deny the remaining allegations of Paragraph 18 of the petition and further allege that Columbia Oil & Gasoline Corporation extended the date for the furnishing of said information, first to August 20, 1930 and then to September 5, 1930, and that, on September 5, 1930, said information had not yet been furnished by Missouri-Kansas Pipe Line Company. They deny that the failure of Columbia Oil & Gasoline Corporation further to extend the period for the furnishing of said information constituted a means of carrying out any combination or

conspiracy or was with the intent by doing so of forcing Missouri-Kansas Pipe Line Company into receivership or in that way or in any other way preventing the completion of the Panhandle Eastern Pipe Line.

[fol. 166] 15. They deny the allegations of Paragraph 19 of the petition except that they deny that they have any knowledge or information sufficient to form a belief as to whether or not the purported agreement attached to the petition as Exhibit B was signed in the name of Missouri-Kansas Pipe Line Company by its President, Frank P. Parish and except that they deny that they have any knowledge or information thereof sufficient to form a belief as to the allegation that "Pursuant to said agreement Moka did borrow for its corporate needs the sum of \$3,000,000 and thereby avoided a receivership." They deny that any such agreement was ever authorized or approved by said Missouri-Kansas Pipe Line Company. They allege on information and belief that said purported agreement contains the following provision:

"This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of the Missouri Company shall be subject to the approval of the Board of Directors of the Missouri Company at a meeting to be held not later than September 17, 1930 and also subject to the approval of the stockholders of Missouri Company."

These defendants further deny on information and belief that said purported agreement was ever approved by the Board of Directors of Missouri-Kansas Pipe Line Company. They further allege on information and belief that said Central Public Service Company was at the time of [fol. 167] the execution of said purported agreement, and has been ever since, financially unable to carry out the terms thereof.

16. They deny the allegations of Paragraph 20 of the petition except that they admit that the agreement dated September 17, 1930, attached to the petition as Exhibit C, was executed by the parties thereto and that they admit the substantial correctness of the quotations from said

agreement contained in Paragraph 20 of the petition. They pray leave to refer to the original of said agreement for the complete provisions thereof on the trial of this case.

17. They admit the allegations of Paragraph 21 of the petition that on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Missouri-Kansas Pipe Line Company and the defendant Columbia Oil & Gasoline Corporation and that the essential terms of said agreement of September 30, 1930 are substantially as set forth in said Paragraph 21 of the petition. They deny the remaining allegations of said Paragraph 21 of the petition except that they admit that the defendant George H. Howard was President of The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation; and they allege that, at the time of the selection of the defendant George H. Howard as the third voting trustee and the ninth director of Panhandle Eastern Pipe Line Company, the officers and directors of Missouri-Kansas Pipe Line Company were well acquainted with the facts that said George H. Howard was [fol. 168] President of The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation.

18. They admit the allegations of Paragraph 22 of the petition except that they deny that the sale of the bonds of Panhandle Eastern Pipe Line Company by The National City Company to the defendant Columbia Oil & Gasoline Corporation was induced by the corporate defendants or either of them as a means of carrying out any combination or conspiracy.

19. They deny the allegations of Paragraph 23 of the petition except that they admit that, during the closing, on October 23, 1930, of the transactions provided for by the contract dated September 17, 1930, and shortly thereafter certain new officers were elected to manage and operate the affairs of Panhandle Eastern Pipe Line Company; and except that they admit the allegation that none of said new officers, with the exception of the defendant Burt R. Bay, had previously been identified either with Missouri-Kansas Pipe Line Company or with Panhandle Eastern Pipe Line Company.

20. They admit the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued \$9,981,000 of its 6% Promissory Notes due on October 2, 1950, which Notes were specifically subordinated to its First Mortgage [fol. 169] Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received \$4,495,500 in Notes and 114,900 shares of stock for its contribution. They deny that Missouri-Kansas Pipe Line Company received any of such Notes or stock. They admit the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of \$10 each, all of which said shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of \$4,940,000. They admit that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes, but they deny that as collateral for said Note issue Missouri-Kansas Pipe Line Company pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of such Panhandle Eastern Pipe Line Company Notes which it could pledge; and they allege, on information and belief, that Panhandle Corporation acquired \$4,495,500 of Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Collateral Trust Notes. [fol. 170] They deny that they have sufficient knowledge or information to form a belief as to the allegation that Missouri-Kansas Pipe Line Company likewise issued its own Two-Year 6% Collateral Trust Notes, in the total principal sum of \$1,060,000, which were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares,

of the outstanding capital stock of Panhandle Corporation. They deny all of the remaining allegations of said Paragraph 24 of the petition.

21. They deny the allegations of Paragraph 25 of the petition except that they admit that in March 1931 Panhandle Eastern Pipe Line Company took appropriate corporate action by which the Mortgage Trust Indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which its First Mortgage Bonds had been issued, was supplemented and amended by a Supplemental Indenture dated March 27, 1931, but they deny that the provisions or legal effect of said Supplemental Indenture were as stated in Paragraph 25 of the petition, and pray leave to refer to the provisions of said Supplemental Indenture when produced on the trial. They allege, on information and belief, that said Supplemental Indenture was approved and authorized by all of the Directors of Panhandle Eastern Pipe Line Company present at the meeting at which said proposed Supplemental Indenture was submitted, including Frank P. Parish, W. G. Maguire and Francis I. Dupont, being three out of the four representatives of Missouri-Kansas Pipe Line [fol. 171] Company on said Board.

22. They deny the allegations of Paragraph 26 of the petition, except that they admit that, at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931 the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company presented a formal demand for a gas purchase contract; that, in response thereto, Fred W. Crawford (now deceased), who was then President of Panhandle Eastern Pipe Line Company and likewise an officer and director of the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company, but they deny that the provisions or legal effect thereof were as stated in Paragraph 26 of the petition and pray leave to refer to the terms of said statement when produced on the trial; and that they admit that on June 5, 1931 a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corporation to prepare and submit a form of contract for the purchase of gas by Missouri-Kansas Pipe Line

Company in accordance with the provisions of said agreement of September 17, 1930.

23. They deny on information and belief the allegations of Paragraph 27 of the petition except that they admit that on March 18, 1932 receivers were appointed for said Missouri-Kansas Pipe Line Company and that since March 14, 1932 the defendant J. H. Hillman, Jr. and three other individuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company.

24. They deny the allegations of Paragraph 28 of the petition.

25. They deny the allegations of Paragraph 29 of the petition except that they admit that Exhibit E therein referred to and set out at Page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and they allege that said Plan of Re-adjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court on or about March 29, 1935, declined to approve the same.

26. They deny the allegations of Paragraph 30 of the petition except that they admit that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition is a true copy of what it purports to be; that at a duly called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

[fol. 173] 27. They deny the allegations of Paragraph 31 of the petition except that they admit that defendant Columbia Oil & Gasoline Corporation is in a position, by the carrying into effect of the "Offer" and "Plan" of June 19,

1935, to obtain ownership of at least 87½% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and except that they admit that the defendant Columbia Oil & Gasoline Corporation will be in a position to foreclose on the Mortgage Trust Indenture in said paragraph referred to after December 31, 1936, if said "Offer" and "Plan" shall not have been consummated by said date.

28. They deny the allegations of Paragraph 32 of the petition.

29. They deny the allegations of Paragraph 33 of the petition and reallege and incorporate the foregoing answers hereinabove set forth to paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

30. They deny the allegations of Paragraph 34 of the petition.

Wherefore these defendants pray that said amended supplemental petition be dismissed and that they may go hence without day and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Ward & Gray, (Sgd.) C. A. Southerland, Solicitors for Defendants Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr. (Sgd.) Cravath, deGersdorf, Swaine & Wood, of Counsel.

January 28, 1936.

[fol.174] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS COLUMBIA OIL & GASOLINE CORPORATION AND CHARLES A. MUNROE TO AMENDED AND SUPPLEMENTAL PETITION—Filed January 29, 1936

And Now Come Columbia Oil & Gasoline Corporation and Charles A. Munroe, each being one of the defendants in the above-named cause, and answer the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

1. They admit the allegations of Paragraphs 1 and 2 of the petition.

2. They admit the allegation of Paragraph 3 of the petition that the defendant Columbia Oil & Gasoline Corporation has an office in the City of New York, New York, but they deny that it has a principal office and place of business in said City, and they deny, on information and belief, that Columbia Gas & Electric Corporation has a principal office and place of business in said City.

3. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 4 and 5 of the petition.

4. They admit the allegation of Paragraph 6 of the petition.

5. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 7 to 11, inclusive, of the petition.

6. They deny the allegations of Paragraph 12 of the petition except that they admit that the individuals referred to [fol. 175] are citizens of the United States and that, during the following respective periods, the following thereof have been

(a) voting trustees of the common stock of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
Philip G. Gossler.....	10/23/30- 7/19/35
George H. Howard.....	10/23/30- 7/19/35

(b) directors of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
George H. Howard.....	10/23/30-11/ 4/31
Philip G. Gossler.....	10/23/30- 5/26/31
Charles A. Munroe.....	10/23/30-11/30/31 and 5/ 5/32-present
Thomas R. Weymouth.....	11/30/31- 4/24/35
Thomas B. Gregory.....	3/ 9/31- 4/24/35
Edward Reynolds, Jr.....	5/26/31- 5/ 5/32
Burt R. Bay.....	5/26/33-present
John H. Hillman, Jr.....	3/14/32-present

(c) officers of said Panhandle Eastern Pipe Line Company, to-wit:

Name	Position	Periods
Edward Reynolds, Jr.....	Vice-President	11/25/30- 3/ 4/35
Edward Reynolds, Jr.....	Secretary	10/23/30- 3/ 4/35
Burt R. Bay.....	Vice-President	1/ 2/30- 5/26/33
Burt R. Bay.....	President	5/26/33-present

(d) directors of Columbia Gas & Electric Corporation, to-wit:

Name	Periods
George H. Howard.....	11/ 6/30- 1/31/35
Philip G. Gossler.....	10/ 1/26-present
Charles A. Munroe.....	1/ 4/29- 6/ 7/34
Thomas B. Gregory.....	10/ 1/26-present
Edward Reynolds, Jr.....	9/11/34-present

[fol. 176]

(e) officers of Columbia Gas & Electric Corporation, to-wit:

Name	Position	Period
Philip G. Gossler	President	10/ 4/26-present
Thomas R. Weymouth	Vice-President	4/ 9/31-present
Thomas B. Gregory	Vice-President	10/ 4/26-present
Edward Reynolds, Jr.	Vice-President	4/12/28-present
Edward Reynolds, Jr.	Secretary	10/ 4/26- 4/ 4/35
Edward Reynolds, Jr.	Treasurer	10/ 4/26- 4/12/28

(f) directors of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/14/30- 5/22/31
Charles A. Munroe	5/14/30-present
Thomas B. Gregory	5/14/30- 6/ 7/34

(g) officers of Columbia Oil & Gasoline Corporation, to-wit:

Name	Position	Periods
Philip G. Gossler	President	5/15/30- 5/22/31
Charles A. Munroe	President	5/22/31-present
Thomas R. Weymouth	Vice-President	4/ 9/31- 6/ 7/34
Thomas B. Gregory	Vice-President	5/15/30- 6/ 7/34
Edward Reynolds, Jr.	Vice-President	5/15/30- 3/ 4/35
Edward Reynolds, Jr.	Secretary	5/15/30- 6/ 7/34

(h) voting trustees of the common stock of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/15/30- 5/22/31
Charles A. Munroe	5/22/31-present
Thomas B. Gregory	6/16/32- 6/ 7/34

7. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 13 of the petition except that they admit that Columbia Gas & Electric Corporation is a holding company owning stocks and other securities of approximately 60 subsidiaries, which subsidiaries are sometimes collectively referred to as Columbia System.

[fol. 177] 8. They deny the allegations of Paragraph 14 of the petition except that they admit that Columbia Oil & Gasoline Corporation is a corporation of the State of Delaware, that it was organized by Columbia Gas & Electric Corporation, that all of its first preferred stock and all of its second preferred stock are owned by Columbia Gas & Electric Corporation and that all of its common stock has been deposited under a Voting Trust Agreement and Voting Trust Certificates were, on June 30, 1930, distributed to holders of record as of May 24, 1930 of the Common Stock of Columbia Gas & Electric Corporation. They deny that Columbia Oil & Gasoline Corporation was organized to "hold" any properties of Columbia System in the sense connoting the retention by Columbia Gas & Electric Corporation of any beneficial ownership in such properties, or that any substantial gas producing properties (other than

properties producing casinghead gas incidentally to oil operations) were transferred to Columbia Oil & Gasoline Corporation.

9. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 15 of the petition.

10. They deny, on information and belief, the allegations of Paragraph 16 of the petition except that they admit that Missouri-Kansas Pipe Line Company was organized under the laws of the State of Delaware in 1928 for the alleged purpose of producing, transporting, distributing and selling natural gas; that in 1929 Panhandle Eastern Pipe Line Company was organized under the laws of the State of Delaware; and that Missouri-Kansas Pipe Line Company [fol. 178] became the owner of the entire capital stock of said corporation.

11. They deny the allegations of Paragraph 17 of the petition.

12. They deny the allegations of Paragraph 18 of the petition except that they admit that on or about June 20, 1930 the defendant Columbia Oil & Gasoline Corporation entered into an agreement with Missouri-Kansas Pipe Line Company, substantially in the form of Exhibit A to the Petition, but deny that the effect of said agreement is such as is alleged in said Paragraph 18. These defendants deny that said agreement was by its terms to expire on August 5, 1930, and allege that said agreement by its terms was not to be binding on either party unless Missouri-Kansas Pipe Line Company should, by August 5, 1930, furnish Columbia Oil & Gasoline Corporation with certain information, which information was essential to enable Columbia Oil & Gasoline Corporation to Determine whether or not the representations on the part of Missouri-Kansas Pipe Line Company contained in said agreement were true, and accordingly to enable Columbia Oil & Gasoline Corporation to determine whether or not it was required to consummate said agreement. They deny the remaining allegations of Paragraph 18 of the petition and further allege that Columbia Oil & Gasoline Corporation extended the date for the furnishing of said information, first to August 20, 1930 and then to September 5, 1930, and that, on September 5, 1930, said information had not yet been furnished by Mis-

souri-Kansas Pipe Line Company. They deny that the [fol. 179] failure of Columbia Oil & Gasoline Corporation further to extend the period for the furnishing of said information constituted a means of carrying out any combination or conspiracy or was with the intent by doing so of forcing Missouri-Kansas Pipe Line Company into receivership or in that way or in any other way preventing the completion of the Panhandle Eastern Pipe Line.

13. They deny the allegations of Paragraph 19 of the petition except that they deny they have any knowledge or information sufficient to form a belief as to whether or not the purported agreement attached to the petition as Exhibit B was signed in the name of Missouri-Kansas Pipe Line Company by its President, Frank P. Parish and except that they deny that they have any knowledge or information thereof sufficient to form a belief as to the allegation that "Pursuant to said agreement Moka did borrow for its corporate needs the sum of \$3,000,000 and thereby avoided a receivership." They deny that any such agreement was ever authorized or approved by said Missouri-Kansas Pipe Line Company. They allege on information and belief that said purported agreement contains the following provision:

"This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of the Missouri Company shall be subject to the approval of the Board of Directors of the Missouri [fol. 180] Company at a meeting to be held not later than September 17, 1930 and also subject to the approval of the stockholders of Missouri Company."

These defendants further deny on information and belief that said purported agreement was ever approved by the Board of Directors of Missouri-Kansas Pipe Line Company. They further allege on information and belief that said Central Public Service Company was at the time of the execution of said purported agreement, and has been ever since, financially unable to carry out the terms thereof.

14. They deny the allegations of Paragraph 20 of the petition except that they admit that the agreement dated September 17, 1930, attached to the petition as Exhibit C, was executed by the parties thereto and that they admit the

substantial correctness of the quotations from said agreement contained in Paragraph 20 of the petition. They pray leave to refer to the original of said agreement for the complete provisions thereof on the trial of this case.

15. They admit the allegations of Paragraph 21 of the petition that on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Missouri-Kansas Pipe Line Company and the defendant Columbia Oil & Gasoline Corporation and that the essential terms of said agreement of September 30, 1930, are substantially as set forth in said Paragraph 21 of the petition. They deny the remaining allegations of said Paragraph 21 of the petition except that they admit that the defendant George H. Howard was President of [fol. 181] The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation; and they allege that, at the time of the selection of the defendant George H. Howard as the third voting trustee and the ninth director of Panhandle Eastern Pipe Line Company, the officers and directors of Missouri-Kansas Pipe Line Company were well acquainted with the facts that said George H. Howard was President of The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation.

16. They admit the allegations of Paragraph 22 of the petition except that they deny that the sale of the bonds of Panhandle Eastern Pipe Line Company by The National City Company to the defendant Columbia Oil & Gasoline Corporation was induced by the corporate defendants or either of them as a means of carrying out any combination or conspiracy.

17. They deny the allegations of Paragraph 23 of the petition except that they admit that, during the closing, on October 23, 1930, of the transactions provided for by the contract dated September 17, 1930, and shortly thereafter, certain new officers were elected to manage and operate the affairs of Panhandle Eastern Pipe Line Company; and except that they admit the allegation that none of said new officers, with the exception of the defendant Burt R. Bay, had previously been identified either with Missouri-Kansas

Pipe Line Company or with Panhandle Eastern Pipe Line Company.

[fol. 182] 18. They admit the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued \$9,981,000 of its 6% Promissory Notes due on October 2, 1950, which Notes were specifically subordinated to its First Mortgage Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received \$4,495,500 in Notes and 114,900 shares of stock for its contribution. They deny that Missouri-Kansas Pipe Line Company received any of such Notes or stock. They admit the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1000 shares, having a par value of \$10 each, all of which said shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of \$4,940,000. They admit that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes, but they deny that as collateral for said Note issue Missouri-Kansas Pipe Line Company [fol. 183] pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of such Panhandle Eastern Pipe Line Company Notes which it could pledge; and they allege, on information and belief, that Panhandle Corporation acquired \$4,495,500 of Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Collateral Trust Notes. They deny that they have sufficient knowledge or information to form a belief as to the allegation that Missouri-Kansas Pipe Line Company likewise issued its own two-year 6% Collateral Trust Notes, in the total principal sum of \$1,060,000, which

were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation. They deny all of the remaining allegations of said Paragraph 24 of the petition.

19. They deny the allegations of Paragraph 25 of the petition except that they admit that in March, 1931 Panhandle Eastern Pipe Line Company took appropriate corporate action by which the Mortgage Trust Indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which its First Mortgage Bonds had been issued, was supplemented and amended by a Supplemental Indenture dated March 27, 1931, but they deny that the provisions or legal effect of said Supplemental Indenture were as stated in Paragraph 25 of the petition, and pray leave to refer to the provisions of [fol. 184] said Supplemental Indenture when produced on the trial. They allege, on information and belief, that said Supplemental Indenture was approved and authorized by all of the Directors of Panhandle Eastern Pipe Line Company present at the meeting at which said proposed Supplemental Indenture was submitted, including Frank P. Parish, W. G. Maguire and Francis I. Dupont, being three out of the four representatives of Missouri-Kansas Pipe Line Company on said Board.

20. They deny the allegations of Paragraph 26 of the petition, except that they admit that, at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931 the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company presented a formal demand for a gas purchase contract; that, in response thereto, Fred W. Crawford (now deceased), who was then President of Panhandle Eastern Pipe Line Company and likewise an officer and director of the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company, but they deny that the provisions or legal effect thereof were as stated in Paragraph 26 of the petition and pray leave to refer to the terms of said statement when produced on the trial; and that they admit that on June 5, 1931 a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corpo-

[fol. 185] ration to prepare and submit a form of contract for the purchase of gas by Missouri-Kansas Pipe Line Company in accordance with the provisions of said agreement of September 17, 1930.

21. They deny, on information and belief, the allegations of Paragraph 27 of the petition except that they admit that on March 18, 1932 receivers were appointed for said Missouri-Kansas Pipe Line Company and that since March 14, 1932 the defendant J. H. Hillman, Jr. and three other individuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company.

22. They deny the allegations of Paragraph 28 of the petition.

23. They deny the allegations of Paragraph 29 of the petition except that they admit that Exhibit E therein referred to and set out at Page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and they allege that said Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court on or about March 29, 1935, declined to approve the same.

24. They deny the allegations of Paragraph 30 of the petition except that they admit that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition is a true copy of what it purports to be; that at a duly [fol. 186] called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

25. They deny the allegations of Paragraph 31 of the petition except that they admit that defendant Columbia Oil & Gasoline Corporation is in a position, by the carrying

into effect of the "Offer" and "Plan" of June 19, 1935, to obtain ownership of at least 87½% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and except that they admit that the defendant Columbia Oil & Gasoline Corporation will be in a position to foreclose on the Mortgage Trust Indenture in said paragraph referred to after December 31, 1936 if said "Offer" and "Plan" shall not have been consummated by said date.

26. They deny the allegations of Paragraph 32 of the petition.

27. They deny the allegations of Paragraph 33 of the petition and reallege and incorporate the foregoing answers hereinabove set forth to paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

[fol. 187] 28. They deny the allegations of Paragraph 34 of the petition.

Wherefore these defendants pray that said amended supplemental petition be dismissed and that they may go hence without day and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Hugh M. Morris, Ivan Culbertson, Solicitors for Defendant, Columbia Oil & Gasoline Corporation and Charles A. Munroe; Howard H. Swain, of Counsel.

January 28, 1936.

[fol. 188] IN UNITED STATES DISTRICT COURT

ANSWER OF JOHN H. HILLMAN, JR., TO AMENDED AND SUPPLEMENTAL PETITION—Filed January 29, 1936

And Now Comes John H. Hillman, Jr., one of the defendants in the above named cause, and answers the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

(1) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 1 to 10, inclusive, of the petition.

(2) He admits the allegation of Paragraph 11 of the petition.

(3) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 12 of the petition; except that he admits that he is a citizen of the United States, and except that he admits that he has been a Director of Panhandle Eastern Pipe Line Company from March 14, 1932 to the present time.

(4) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 13 to 16, inclusive, of the petition.

(5) He denies the allegations of Paragraph 17 of the petition.

(6) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth *set forth* [fol. 189] *set forth* in Paragraphs 18 to 23, inclusive, of the petition.

(7) He admits the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued \$9,981,000 of its 6% Promissory Notes due October 2, 1950, which Notes were specifically subordinated to its First Mortgage Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received \$4,495,500 in Notes and 114,900 shares of stock for its contribution. He admits the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of \$10 each, all of which such shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of \$4,940,000. He admits that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes; but he denies that as collateral for said Note

issue Missouri-Kansas Pipe Line Company pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of [fol. 190] such Panhandle Eastern Pipe Line Company Notes which it could pledge; and he alleges that Panhandle Corporation acquired \$4,495,500 of Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Collateral Trust Notes. He admits that Missouri-Kansas Pipe Line Company issued its own Two-Year 6% Collateral Trust Notes, in the total principal sum of \$1,060,000, which were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation. He denies all of the remaining allegations of said Paragraph 24 of the petition, except that he admits that he and a member of Dillon, Reed & Company had certain conversations with the defendant Gossler prior to the financing described in said Paragraph 24, as to the value and the safety of the securities of Panhandle Corporation and Moka proposed to be purchased, in which the defendant Gossler pointed out certain dangers in the proposed financing which might result in a default of the proposed securities.

(8) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 25 of the petition.

(9) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in the first sentence of Paragraph 26 of the petition; and he denies the allegations set forth in the second sentence of Paragraph 26 of the petition.

[fol. 191] (10) He denies the allegations of Paragraph 27 of the petition, except that he admits that on March 18, 1932 receivers were appointed for Missouri-Kansas Pipe Line Company and that since March 14, 1932 he and three other individuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company; and that in February, 1933, certain corporations in which he was interested became the owners of 679 shares of stock of Panhandle Corporation, which corporation owns one-half

of the outstanding capital stock of Panhandle Eastern Pipe Line Company.

(11) He denies the allegations of Paragraph 28 of the petition.

(12) He denies the allegations of Paragraph 29 of the petition, except that he admits that Exhibit E therein referred to and set out at page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and he alleges that said Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court, on or about March 29, 1935, declined to approve the same.

(13) He denies the allegations of Paragraph 30 of the petition, except that he admits that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition [fol. 192] is a true copy of what it purports to be; that at a duly called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

(14) He denies the allegations of Paragraph 31 of the petition, except that he denies that he has any knowledge or information sufficient to form a belief as to the allegation that defendant Columbia Oil & Gasoline Corporation is in a position to obtain ownership of 100% of the outstanding capital stock of Panhandle Eastern Pipe Line Company or to foreclose on the Mortgage Trust Indenture in said Paragraph referred to.

(15) He denies the allegations of Paragraph 32 of the petition.

(16) He denies the allegations of Paragraph 33 of the petition and re-alleges and incorporates the foregoing an-

swers hereinabove set forth to Paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

(17) He denies the allegations of Paragraph 34 of the petition.

[fol. 193] Wherefore, this defendant prays that said amended supplemental petition be dismissed and that he may go hence without delay and recover his costs herein, and for such other and proper relief as is equitable.

(Sgd.) H. F. Reindel, C. S. Layton, Solicitors for Defendant, John H. Hillman, Jr.

[fol. 194] IN UNITED STATES DISTRICT COURT

ANSWER OF BURT R. BAY TO AMENDED AND SUPPLEMENTAL PETITION—Filed January 29, 1936

And Now Comes Burt R. Bay, one of the defendants in the above-named cause, and answers the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

1. He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 1 to 9, inclusive, of the petition.

2. He admits the allegation of Paragraph 10 of the petition.

3. He Denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 11 of the petition.

4. He Denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 12 of the petition except that he admits that the individuals referred to are citizens of the United States and that, during the following respective periods, the following thereof have been

(a) voting trustees of the common stock of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
Philip G. Gossler	10/23/30- 7/19/35
George H. Howard	10/23/30- 7/19/35

[fol. 195] (b) directors of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
George H. Howard.....	10/23/30-11/ 4/31
Philip G. Gossler.....	10/23/30- 5/26/31
Charles A. Munroe.....	10/23/30-11/30/31
	and
Thomas R. Weymouth.....	5/ 5/32-present
Thomas B. Gregory.....	11/30/31- 4/24/35
Edward Reynolds, Jr.....	3/ 9/31- 4/24/35
Burt R. Bay.....	5/26/31- 5/ 5/32
John H. Hillman, Jr.....	5/26/33-present
	3/14/32-present

(c) Officers of said Panhandle Eastern Pipe Line Company, to-wit:

Name	Position	Periods
Edward Reynolds, Jr.....	Vice-President	11/25/30- 3/ 4/35
Edward Reynolds, Jr.....	Secretary	10/23/30- 3/ 4/35
Burt R. Bay.....	Vice-President	1/ 2/30- 5/26/33
Burt R. Bay.....	President	5/26/33-present

5. He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 13 to 15, inclusive, of the petition.

6. He denies, on information and belief, the allegations of Paragraph 16 of the petition except that it admits that Missouri-Kansas Pipe Line Company was organized under the laws of the State of Delaware in 1928 for the alleged purpose of producing, transporting, distributing and selling natural gas; that in 1929 Panhandle Eastern Pipe Line Company was organized under the laws of the State of Delaware; and that Missouri-Kansas Pipe Line Company became the owner of the entire capital stock of said corporation.

7. He denies the allegations of Paragraph 17 of the petition.

[fol. 196] 8. He denies the allegations of Paragraph 18 of the petition except that he admits that on or about June 20, 1930 the defendant Columbia Oil & Gasoline Corporation entered into an agreement with Missouri-Kansas Pipe Line Company, substantially in the form of Exhibit A to the Petition.

9. He denies the allegations of Paragraph 19 of the petition except that he admits that the purported agreement attached to the petition as Exhibit B was signed in the name of Missouri-Kansas Pipe Line Company by its President, Frank P. Parish and except that he admits that thereafter Missouri-Kansas Pipe Line Company borrowed the sum of

\$3,000,000. He alleges on information and belief that said purported agreement contains the following provision:

"This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of the Missouri Company shall be subject to the approval of the Board of Directors of the Missouri Company at a meeting to be held not later than September 17, 1930 and also subject to the approval of the stockholders of Missouri Company."

This defendant further denies that said purported agreement was ever approved by the Board of Directors of Missouri-Kansas Pipe Line Company.

10. He denies the allegations of Paragraph 20 of the petition except that he admits that the agreement dated September [fol. 197] ber 17, 1930, attached to the petition as Exhibit C, was executed by the parties thereto and that he admits the substantial correctness of the quotations from said agreement contained in Paragraph 20 of the petition. He prays leave to refer to the original of said agreement for the complete provisions thereof on the trial of this case.

11. He admits the allegations of Paragraph 21 of the petition that on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Missouri-Kansas Pipe Line Company and the defendant Columbia Oil & Gasoline Corporation and that the essential terms of said agreement of September 30, 1930 are substantially as set forth in said Paragraph 21 of the petition. He denies that he has any knowledge or information sufficient to form a belief as to the remaining allegations set forth in said Paragraph 21 of the petition.

12. He admits the allegations of Paragraph 22 of the petition except that he denies that he has any knowledge or information sufficient to form a belief as to the allegation set forth in said Paragraph 22 of the petition to the effect that the sale of the bonds of Panhandle Eastern Pipe Line Company by The National City Company to the defendant Columbia Oil & Gasoline Corporation was induced by the corporate defendants or either of them as a means of carrying out any combination or conspiracy.

13. He denies on information and belief the allegations of Paragraph 23 of the petition except that he admits that, on October 23, 1930 and shortly thereafter, certain new [fol. 198] officers were elected to manage and operate the affairs of Panhandle Eastern Pipe Line Company; and except that he admits the allegation that none of said new officers, with the exception of himself, had previously been identified either with Missouri-Kansas Pipe Line Company or with Panhandle Eastern Pipe Line Company.

14. He admits the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued \$9,981,000 of its 6% Promissory Notes due on October 2, 1950, which Notes were specifically subordinated to its First Mortgage Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received \$4,495,500 in Notes and 114,900 shares of stock for its contribution. He denies that Missouri-Kansas Pipe Line Company received any of such Notes or stock. He admits the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of \$10 each, all of which said shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation [fol. 199] of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of \$4,940,000. He admits that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes, but he denies that as collateral for said Note issue Missouri-Kansas Pipe Line Company pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of such Panhandle Eastern Pipe Line Company Notes which it could pledge; and he alleges, on information and belief, that Panhandle Corporation acquired \$4,495,500 of

Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Collateral Trust Notes. He denies that he has sufficient knowledge or information to form a belief as to the allegation that Missouri-Kansas Pipe Line Company likewise issued its own Two-Year 6% Collateral Trust Notes, in the total principal sum of \$1,060,000, which were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation. He denies all of the remaining allegations of said Paragraph 24 of the petition.

15. He denies the allegations of Paragraph 25 of the petition except that he admits that in March, 1931 Panhandle Eastern Pipe Line Company took appropriate corporate action by which the Mortgage Trust Indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which its First Mortgage Bonds had been issued, was supplemented and amended by a Supplemental Indenture dated March 27, 1931, but he denies that the provisions or legal effect of said Supplemental Indenture were as stated in Paragraph 25 of the petition, and prays leave to refer to the provisions of said Supplemental Indenture when produced on the trial. He alleges, on information and belief, that said Supplemental Indenture was approved and authorized by all of the Directors of Panhandle Eastern Pipe Line Company present at the meeting at which said proposed Supplemental Indenture was submitted, including Frank P. Parish, W. G. Maguire and Francis I. Dupont, being three out of the four representatives of Missouri-Kansas Pipe Line Company on said Board.

16. He denies on information and belief the allegations of Paragraph 26 of the petition, except that he admits that, at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931 the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company presented a formal demand for a gas purchase contract; that, in response thereto, Fred W. Crawford (now deceased), who was then President of Panhandle Eastern Pipe Line Company and likewise an officer and director of

the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company, but he denies that the provisions or legal effect thereof [fol. 201] were as stated in Paragraph 26 of the petition and prays leave to refer to the terms of said statement when produced on the trial; and that he admits that on June 5, 1931 a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corporation to prepare and submit a form of contract for the purchase of gas by Missouri-Kansas Pipe Line Company in accordance with the provisions of said agreement of September 17, 1930.

17. He denies on information and belief the allegations of Paragraph 27 of the petition except that he admits that on March 18, 1932 receivers were appointed for said Missouri-Kansas Pipe Line Company and that since March 14, 1932 the defendant J. H. Hillman, Jr. and three other individuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company.

18. He denies the allegations of Paragraph 28 of the petition.

19. He denies the allegations of Paragraph 29 of the petition except that he admits that Exhibit E therein referred to and set out at Page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and he alleges that said Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court on [fol. 202] or about March 29, 1935, declined to approve the same.

20. He denies the allegations of Paragraph 30 of the petition except that he admits that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition is a true copy of what it purports to be; that at a duly called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization

of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

21. He denies the allegations of Paragraph 31 of the petition except that he admits that defendant Columbia Oil & Gasoline Corporation is in a position, by the carrying into effect of the "Offer" and "Plan" of June 19, 1935, to obtain ownership of at least 87½% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and except that he admits that the defendant Columbia Oil & Gasoline Corporation will be in a position to foreclose on the Mortgage Trust Indenture in said paragraph referred to after December 31, 1936, if said "Offer" and "Plan" shall not have been consummated by said date.

22. He denies the allegations of Paragraph 32 of the petition.

[fol. 203] 23. He denies the allegations of Paragraph 33 of the petition and realleges and incorporates the foregoing answers hereinabove set forth to paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

24. He denies the allegations of Paragraph 34 of the petition.

Wherefore this defendant prays that said amended supplemental petition be dismissed and that he may go hence without day and recover his costs herein, and for such other and proper relief as is equitable.

(Sgd.) James M. Malloy, Solicitor for Defendant,
Burt R. Bay. (Sgd.) Howard H. Swain, of Counsel.

January 28, 1936.

[fol. 204] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed January 29, 1936

I

The petitioner asserts that the allegations contained in its amended and supplemental petition are true and that

the defendant Columbia Gas & Electric Corporation, through ownership by its affiliate Columbia Oil & Gasoline Corporation of various securities of Panhandle Eastern Pipe Line Company and otherwise, has interfered with, dominated and controlled the management and operation of said Panhandle Eastern Pipe Line Company with the purpose and effect of preventing competition, actual and potential, between said Panhandle Eastern Pipe Line Company and said Columbia Gas & Electric Corporation and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States in violation of the Antitrust laws of the United States.

II

The defendants maintain the truth of their answers in this cause and assert that they have not violated the Antitrust laws in fact or intent, but that they desire to avoid the expense and disturbance necessarily involved in continuing this litigation, and are willing that a consent decree in the form attached hereto and made a part hereof be entered herein, without conceding or admitting the truth [fol. 205] of the facts or matters alleged by the petitioner and without any findings of fact, provided that such consent on their part and the entry of said decree shall not constitute or be considered an admission and that the entry of such decree or the decree itself shall not be considered an adjudication that they have violated any law of the United States. The defendants agree, however, that nothing herein contained shall be considered as questioning the jurisdiction of this Court to enter this decree or to make the same valid and binding upon the defendants in all respects, and jurisdiction of the Court for this purpose is admitted by the defendants.

III

The petitioner and the defendants agree that provision against domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation and the maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others constitutes the proper basis for the entry of the attached decree.

IV

As a partial means of carrying into effect the purposes of the attached decree, the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation agree as promptly as possible to cause appropriate corporate action to be taken whereby (a) the present demand indebtedness of Columbia Oil & Gasoline Corporation to Columbia Gas & Electric Corporation shall be [fol. 206] partially liquidated; (b) the balance of said demand indebtedness shall be converted into obligations of Columbia Oil & Gasoline Corporation, maturing in not less than 15 years from the date thereof, which obligations so long as owned by Columbia Gas & Electric Corporation shall be subject to the pertinent provisions of the attached decree; (c) the present classes of preferred stock of Columbia Oil & Gasoline Corporation and the accrued dividends thereon shall be replaced by one class of preferred stock which, so long as owned by Columbia Gas & Electric Corporation, shall be entitled to elect not more than a minority of the Board of Directors of Columbia Oil & Gasoline Corporation; (d) the by-laws of Columbia Oil & Gasoline Corporation shall be amended to provide that no one other than the directors elected by the preferred stock as provided in clause (c) above shall be a director of Columbia Oil & Gasoline Corporation who is a director, officer or employee of Columbia Gas & Electric Corporation or of any of its subsidiaries, and that no one who is a director, or officer, or employee of Columbia Gas & Electric Corporation or of any of its subsidiaries shall be an officer of Columbia Oil & Gasoline Corporation; (e) the voting trust for the common stock of Columbia Oil & Gasoline Corporation shall be dissolved and certificates for such common stock shall be distributed to the present owners of voting trust certificates, and said common stockholders shall thereafter have the right of cumulative voting for the election of directors.

[fol. 207]

V

(a) The defendant Columbia Oil & Gasoline Corporation agrees that it will forthwith carry into effect its Offer of Exchange, dated June 19, 1935, to Holders of Two-Year 6% Collateral Trust Notes of Panhandle Corporation which offer appears on pages 118 to 125, inclusive, of the amended

and supplemental petition herein and that as soon as said exchange has been accomplished it will cause appropriate corporate action to be taken whereby the entire issue of 6% promissory notes of Panhandle Eastern Pipe Line Company will be either cured of default or retired.

(b) The defendant Columbia Oil & Gasoline Corporation further agrees that Panhandle Eastern Pipe Line Company shall have not less than twenty days, after the taking of said action to cure said issue of its 6% promissory notes of default or their retirement, in which to make final binding commitments for the financing necessary to consummate its agreement with Detroit City Gas Company dated August 31, 1935.

(c) The defendant Columbia Oil agrees to make, within 48 hours of the entry of the attached decree, a bona fide offer in writing to the Receivers of Missouri-Kansas Pipe Line Company, appointed by the Delaware Chancery Court, providing among other things for the settlement of the claims of the Receivers asserted against the defendants herein and the acquisition by the Receivers of a direct interest in the stock of Panhandle Eastern Pipe Line Company, to the extent of one-half of the initial amount of common stock of Panhandle Eastern Pipe Line Company to be outstanding after a recapitalization thereof, subject to any right of preferred stock which may have voting rights and rights of conversion into common stock and also subject to other conditions of the offer which may alter the proportionate interest of the various parties in Panhandle Eastern Pipe Line Company.

VI

None of the provisions hereof shall be deemed to be conditions precedent to the entry of the attached decree, and in accordance with the foregoing provisions the consent decree in form hereto attached may be entered forthwith on the motion of any party hereto.

Dated this Twenty-ninth day of January, 1936.

United States of America, by (Sgd.) Carl McFarland, Acting Assistant Attorney General,
(Sgd.) John J. Morris, Jr., United States Attorney, Columbia Gas & Electric Corporation,

George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., by Solicitors (Sgd.) Ward & Gray, (Sgd.) Cravath, deGersdorf, Swaine & Wood, of Counsel, Columbia Oil & Gasoline Corporation, Charles A. Munroe, by (Sgd.) Hugh M. Morris, (Sgd.) Ivan Culbertson, Solicitor, (Sgd.) Howard H. Swain, of Counsel, Burt R. Bay, by (Sgd.) James M. Malloy, Solicitor, (Sgd.) Howard H. [fol. 209] Swain, of Counsel, John H. Hillman, Jr., by (Sgd.) C. S. Layton, Solicitor.

(Form of consent decree annexed to foregoing stipulation, same as decree as entered and not repeated here. See page 210.)

[fol. 210] IN UNITED STATES DISTRICT COURT

CONSENT DECREE—Filed January 29, 1936

This cause coming on to be heard this 29th day of January, 1936, and the several defendants having accepted service of process and having appeared and filed their answers to the Amended and Supplemental Petition herein, which latter has superseded the original Petition and is herein-after referred to as the Petition;

And the petitioner and the defendants having filed a stipulation with the Clerk of the Court wherein and whereby they consent to the making and entering of this decree;

And it appearing that the petitioner alleges that the defendant Columbia Gas & Electric Corporation, through ownership by its affiliate Columbia Oil & Gasoline Corporation of various securities of Panhandle Eastern Pipe Line Company and otherwise, has interfered with, dominated and controlled the management and operation of said Panhandle Eastern Pipe Line Company with the purpose and effect of preventing competition, actual and potential, between said Panhandle Eastern Pipe Line Company and said Columbia Gas & Electric Corporation, and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States;

[fol. 211] And it further appearing from said stipulation that the petitioner and the defendants have agreed that

provision against domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation and the maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others constitutes the proper basis for the entry of this decree;

Now, Therefore, without taking any testimony or evidence and in accordance with such stipulation, it is hereby Ordered, Adjudged and Decreed as follows:

I

That the Court has jurisdiction of the subject matter hereof and of all the parties hereto, with full power and authority to enter this decree; and that the petition states a cause of action under the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

That the restrictions and injunctions herein shall apply not only with respect to the parties hereto and corporations mentioned herein but also to all persons, corporations, partnerships, associations or organizations acting, claiming or assuming to act for or on behalf of them or any of them; to [fol. 212] their successors or assigns and any and all partnerships, corporations or individuals who may directly or indirectly acquire the ownership or control of the property, business, or assets (except securities of Panhandle Eastern) of said parties whether by merger, consolidation, reorganization or otherwise; and to the taking of action prohibited herein by indirection or by or through subsidiaries, affiliates, officers, directors, shareholders, agents, receivers, trustees, attorneys, employees, or otherwise, individually or collectively;

That the defendant Columbia Gas & Electric Corporation; a Delaware corporation hereinafter referred to as "Columbia Gas", is a holding company owning more than 50 subsidiary companies; that a substantial part of the business of said enterprise is the production, transmission, distribution and sale of natural and artificial gas;

That the defendant Columbia Oil & Gasoline Corporation, hereinafter referred to as "Columbia Oil", is a corporation of the State of Delaware organized to hold and operate oil and gasoline properties formerly owned by Columbia Gas and has not been and is not now engaged in the business of producing, transmitting, distributing and selling natural gas except that it owns certain securities of said Panhandle Eastern Pipe Line Company and all of the outstanding capital stock and certain indebtedness of Indiana Gas Transmission Corporation;

That Panhandle Eastern Pipe Line Company, hereinafter referred to as "Panhandle Eastern", is a corporation of the State of Delaware, owns and controls large gas producing areas in the Texas Panhandle and in Kansas and has constructed a natural gas pipe line from said producing areas through the States of Oklahoma, Kansas, Missouri, Illinois, and touching upon Indiana, for the purpose of transmitting, distributing and selling such natural gas;

That Panhandle Corporation is a corporation of the State of Maryland, and now owns stock and notes of Panhandle Eastern;

That the individual defendants named in the petition herein are citizens of the United States and have been either voting trustees of the common stock of Panhandle Eastern or officers or directors of said corporation, and with the exception of the defendants Burt R. Bay and John H. Hillman, Jr., have been officers or directors of Columbia Gas and Columbia Oil.

II

That the defendants be and they are hereby perpetually enjoined from exercising, or attempting, individually or collectively, directly or indirectly, to exercise any dominion or control over Panhandle Eastern and from restraining, or interfering in any manner with, the free and independent action of said Panhandle Eastern in the production, transportation, sale or delivery of natural gas to any person, corporation, community or section of the United States; from holding, acquiring, voting or in any manner acting as the owners, directly or indirectly, of the whole or any part of the stock, or other share capital, or bonds, property or assets of Panhandle Eastern or any other company, corporation, association or organization owning any

substantial amount of its securities; and from participating in any way, directly or indirectly, or from exercising any [fol. 214] control, direction, supervision, or influence, in the management or control of Panhandle Eastern; except

(a) That defendants may own stock in and obligations of Columbia Gas and Columbia Oil and be and exercise the lawful rights of directors or officers thereof;

(b) That defendants may own stock and obligations in Panhandle Corporation ~~for~~, and pending, the dissolution of the latter corporation and the disposition of its interests in Panhandle Eastern as speedily as possible, in a manner not inconsistent with the provisions of this Section II and the purposes and further provisions of this decree; and defendant Hillman may continue to own 60,000 shares of stock he now holds in Missouri-Kansas Pipe Line Company so long as the voting rights appurtenant thereto are exercised independently of the other defendants herein and not in a manner inconsistent with the purposes and provisions of this decree;

(c) That Columbia Gas and defendant Hillman may own or acquire obligations, without present or potential voting rights, of said Panhandle Eastern, except that Columbia Gas is hereby enjoined and restrained in connection with enforcing any rights under said obligations with respect to principal, interest or sinking fund, from acquiring any of the pipe line or other physical assets of Panhandle Eastern;

(d) That Columbia Oil may own or acquire stock or obligations in Panhandle Eastern and exercise voting rights appurtenant thereto (and defendant Bay may be and exercise the lawful rights of an officer of Panhandle Eastern), subject to the further terms and provisions of this decree, [fol. 215] but Columbia Gas is hereby perpetually enjoined and restrained from acquiring any interest in such stock, by operation of law, or in connection with enforcing any lien created through the present or future existence of any debt; whether funded or unfunded, of Columbia Oil to Columbia Gas, or otherwise;

(e) That, when Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by no longer owning stock of any class

having present or potential voting rights in Columbia Oil, upon the approval of this Court Columbia Oil shall no longer be subject to the restrictive clauses of this Section II;

III

That Gano Dunn is hereby nominated, constituted and appointed trustee for the purposes and with the powers and duties set forth in this Section III;

That within 10 days after the entry of this decree Columbia Oil shall execute, and deposit with said trustee the agreements and offers executed by it in accordance with, its agreements set forth in Section V of the stipulation pursuant to which this decree is entered;

That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee [fol. 216] to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions;

(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, but not including any of the individual defendants herein or any one (except with the approval of the trustee and this Court) who after January 1, 1931, has been or hereafter becomes an officer, director, agent or employee of Columbia Gas; and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;

[fol. 217] (c) To deposit for safe-keeping the certificates for such stock with such bank or trust company as he may select and to issue, or arrange for the issuance, by such bank or trust company to the defendant Columbia Oil, of receipts for the stock so deposited in such form as the trustee may approve;

(d) To receive reasonable compensation, the amount thereof to be approved by this Court at not less than \$15,000 per annum, for all services rendered by him as trustee, and to be reimbursed for any expenses incurred by him in the performance of his duties hereunder, upon quarterly accounts to this Court, which, when approved by the Court, shall be paid in equal shares by the defendants Columbia Gas and Columbia Oil;

(e) To pay over to Columbia Oil all dividends received upon said stock, except that dividends in the form of stock having present or potential voting rights shall be retained by the trustee subject to the same terms and conditions as the other shares held hereunder;

(f) To exercise all rights to subscribe to additional stock or other securities of Panhandle Eastern as Columbia Oil may direct;

(g) To report to this Court semi-annually; and to account for any action hereunder only in proceedings in this Court, any further order of this Court entered upon notice to such trustee and to the parties hereto shall be full protection to him for any action taken pursuant thereto, and the trustee shall not be personally responsible for mistakes in judgment or mistakes of law or fact in the execution of his duties hereunder but only for lack of good faith;

[fol. 218] That during the existence of the trust hereby created the trustee herein appointed shall be subject to removal by this court in its discretion; and in the event of such removal or in the event of the death, resignation or inability to act of such trustee, his successor shall be appointed by this Court upon recommendation of the parties hereto;

That the trust hereby created shall be and remain in full force and effect until terminated with the approval of this Court when (1) Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by (a) no longer owning stock of any class having present or potential voting rights in Columbia Oil or (b) by Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern; or when (2), under the circumstances then existing, the continuation of said trust is no longer essential or necessary in carrying out the purposes of this decree; Provided, that no such stock of Panhandle Eastern shall be divested by transfer to any competitor of Panhandle Eastern or without prior notice and full disclosure of the facts to petitioner;

IV

That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not [fol. 219] built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any way

prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both [fol. 220] temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder.

V

That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof.

Dated, Wilmington, Delaware, January 29th, 1936.

(Sgd.) John P. Nields, United States District Judge.

[fol. 221] IN UNITED STATES DISTRICT COURT

REPORT OF GANO DUNN, TRUSTEE UNDER THE DECREE HEREIN,
FOR THE SEMI-ANNUAL PERIOD JANUARY 29, 1936, TO JULY
29, 1936

To the Honorable the Judge of the District Court of the
United States for the District of Delaware:

Now comes Gano Dunn, Trustee heretofore appointed
herein, and respectfully shows as follows:

First. That by decree entered herein on the 29th day of
January, 1936, he was appointed a Trustee herein, for the
purposes set forth in said decree, and that on the said date
he undertook and assumed his duties as Trustee.

Second. That subdivision (g) of Section III of the said decree provides that the Trustee shall report to this Court semi-annually.

Third. Pursuant to said decree, the Trustee submits the following as his first semi-annual report for the period January 29th, 1936 to July 29th, 1936:

[fol. 222]

Report

1. Powers and Duties of the Trustee

The powers and duties of the Trustee are set forth in Sections III and IV of the decree, copy of which is annexed, marked Exhibit A.

2. Transfer of Stock Ownership to Trustee

In accordance with Section III of the decree, all of the stock of Panhandle Eastern owned by Columbia Oil at the time of the entry of the decree and all of such stock acquired by it subsequently or received in exchange for existing holdings was transferred to the Trustee, and deposited by him for safekeeping with the Grace National Bank of New York, 7 Hanover Square, New York, N. Y. The amount of such stock of which the Trustee holds the legal title and is the owner of record is

404,326 shares of common stock
100,000 shares of Class A preferred stock,
and 10,000 shares of Class B preferred stock.

A copy of the receipts for this stock issued by the Grace National Bank to Columbia Oil in form approved by the Trustee, is annexed marked Exhibit B.

3. The Board of Directors

Section III (a) of the decree provides that the Trustee shall vote the stock standing in his name for the election of as many directors of Panhandle Eastern as the number of shares thereof shall be entitled to elect, the Trustee to be one of such directors and the remainder selected (with [fol. 223] certain exclusions) from among persons recommended by Columbia Oil, in conference and with the advice of the Trustee.

Pending the first meeting of stockholders for the election

of directors after the entry of the decree a board was promptly constituted consisting of:

William P. Phillips, James L. Harrop, Joseph A. Bower, Dean Mathey, Recommended by Columbia Oil.

Henry T. Bush, C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Co.

F. Cliffe Johnston, Ashton W. Hawkins, Recommended by the trustee.

Gano Dunn, Trustee.

The above board was re-elected at the stockholders meeting held March 9, 1936, by vote of Gano Dunn voting as stockholder of record of the stock held by him and also as proxy for the remaining stock.

On June 2, 1936, Mr. William P. Phillips tendered his resignation as President and Director of the Company to take effect June 15, 1936, and at the meeting of the Board on June 2, 1936, Mr. Joe D. Creveling was elected President and Director to succeed him.

At all times the members of the Board of Directors have cooperated with the Trustee in every way to carry out the purposes of the decree.

4. Financing of Panhandle Eastern to Carry Out Its Contract With Detroit City Gas Company

On August 31, 1935 Panhandle Eastern entered into a favorable contract with Detroit City Gas Company to sell gas to the latter for distribution to consumers in the City of [fol. 224] Detroit, a copy of which is annexed as a part of Exhibit F hereinafter referred to. The carrying out of this contract depended upon the construction of a pipe line connecting the eastern terminus of Panhandle Eastern's existing pipe line with the City of Detroit and also the reinforcement of its existing line, and the contract provided that it should become void unless Panhandle Eastern should obtain a commitment for the financing of such construction on or before February 1st, 1936.

The decree provided in Section IV that any contractual or financial arrangements made by Panhandle Eastern to consummate the above contract with the Detroit City Gas Company should be subject to the approval of the Trustee who should receive and consider the advisability of alternative methods of financing from any responsible underwriters,

and if such financing should be secured from Columbia Gas it should be only upon the terms and conditions specified in the decree.

On January 31, 1936 Panhandle Eastern entered into an agreement for such financing with Columbia Gas and Columbia Oil subject to a provision that the agreement should cease to be effective if within twenty days Panhandle Eastern should be able to arrange for financing from other sources. This agreement was accepted by Detroit City Gas Company as sufficient compliance with the provisions of its contract that such financing should be contracted for on or before February 1st, 1936. A copy of the agreement of January 31, 1936 is annexed hereto, marked Exhibit C.

Financing from other sources not proving feasible and none having been offered, the Trustee on February 28th, 1936, approved the agreement of January 31st, 1936, subject to a modification thereof by which the time of stockholders other than Columbia Oil to subscribe for the issue [fol. 225] of stock therein provided for should be extended. Copies of such approval and of the modification agreed to are annexed hereto, marked Exhibits D and E.

The agreement of January 31st, 1936, provided for the making of a contract between Panhandle Eastern and Michigan Gas Transmission Corporation (a subsidiary of Columbia Gas) for the completion by the latter of its pipe line from the eastern terminus of Panhandle Eastern's line to Detroit and the transmission of gas from such eastern terminus to Detroit and the delivery thereof to Detroit City Gas Company in accordance with the Detroit contract.

This contract between Panhandle Eastern and Michigan Gas Transmission Corporation was made on March 17th, 1936 and was approved by the Trustee on that date. Copies of the contract and of the Trustee's approval are annexed marked Exhibits F and G.

On June 2, 1936, Panhandle Eastern made a Supplemental Contract with Detroit City Gas Company and a Supplemental Contract with Michigan Gas Transmission Corporation in relation thereto, for the purpose of causing the Detroit City Gas Company to develop more rapidly additional demands for gas in Detroit. Copies of these contracts are annexed marked Exhibits H and I.

In the contract with Michigan Gas Transmission Corporation dated March 17th, 1936, reservation of capacity was made to cover then existing commitments of Michigan Gas

Transmission not exceeding 2,250,000,000 cubic feet per year for the sale of gas for distribution to various communities in the State of Indiana. This gas was being furnished to Michigan by Panhandle Eastern as excess capacity gas under a letter contract, terminable on 90 days notice. On July 28, 1936, the directors of Panhandle Eastern authorized a contract with Michigan to sell such gas to the latter as firm gas for distribution in the communities designated [fol. 226] at the higher price received by Panhandle Eastern under the Detroit contract. A copy of the contract, executed as of July 31, 1936, is annexed marked Exhibit J.

5. Performance of the Detroit Contract

The contract with Detroit City Gas Company, dated August 31, 1935, provided that deliveries should begin not earlier than July 1st, 1936, and not later than September 1, 1936, but it was understood that every effort would be made to begin deliveries as soon after July 1st as possible. The work of pipe line construction and reinforcement was effectively expedited, and deliveries begun on July 9th, 1936.

Under the contract the buyer agreed to take not less than the following amounts of gas:

First year,	81,120,000 therms
Second year,	101,400,000 therms
Third year,	121,680,000 therms
Fourth year,	141,960,000 therms
Fifth and each year thereafter,	152,100,000 therms

It is now expected that the buyer will take the five year minimum amount well within five years.

6. Settlement Between Columbia Oil, Columbia Gas and Missouri-Kansas Pipe Line Company

The decree provided that within ten days after its entry Columbia Oil should deposit with the Trustee the offer of settlement provided for in Section V of the Stipulation upon which the decree was entered. The offer which was executed by Columbia Oil on January 31, 1936 and deposited with the Trustee was rejected by the Receivers of Missouri-Kansas Pipe Line Company (hereinafter called Mo-Kan). A modified offer was subsequently accepted by the Receivers and was approved by the Court of

Chancery of the State of Delaware by order entered April 29, 1936, directing the Receivers to accept and carry out the offer of January 31, 1936, as supplemented and modified. The offer as modified is set forth in the minutes of the meeting of directors of Panhandle Eastern held May 19, 1936, a copy of which is annexed, marked Exhibit L.

For the purpose of carrying out the settlement, Columbia Oil, Columbia Gas and the Mo-Kan Receivers entered into an agreement dated June 1, 1936, a copy of which is annexed marked Exhibit K and Panhandle Eastern, Columbia Oil, and Columbia Gas and the Mo-Kan Receivers entered into an agreement, known as the four-party agreement, dated June 1, 1936, a copy of which is set forth in the minutes of the meeting of the directors of Panhandle Eastern held on May 19, 1936, a copy of which is annexed marked Exhibit L.

The four-party agreement, so far as it was to be presently performed, namely the exchange of releases, amendment of certificate of incorporation of Panhandle Eastern, amendment of sinking fund provisions of its mortgage, and the extension of time for its stockholders to subscribe to the issue of common stock of Panhandle Eastern not subscribed for and taken by Columbia Oil, was carried out on June 1, 1936.

7. Minutes of Meetings of Board of Directors

Annexed marked Exhibit L are copies of the minutes of all meetings of the Board of Directors of Panhandle Eastern during the six months period from the entry of the decree. These minutes are complete and detailed and show in full all the operations of the Company through its [fol. 228] Board of Directors during that period. (To avoid duplication copies of contracts already annexed to this report as exhibits have been omitted from the minutes to which they were also annexed.).

8. General

The Company is in excellent financial condition; its business is increasing, and its prospects for profitable operation are most favorable.

Dated 80 Broad Street, New York, August 11th, 1936.

Respectfully submitted, Gano Dunn, Trustee.

(Affidavit of Gano Dunn.)

[fol. 229]

EXHIBIT "C" TO REPORT

Agreement made this 31st day of January, 1936, between Panhandle Eastern Pipe Line Company (hereinafter referred to as Eastern), a corporation of the State of Delaware, party of the first part, Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), a corporation of the State of Delaware, party of the second part, and Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil), a corporation of the State of Delaware, party of the third part.

Eastern has entered into a contract, dated the 31st day of August, 1935, with Detroit City Gas Company, whereby Eastern has contracted to supply the natural gas requirements of Detroit City Gas Company, up to the maximum amount therein specified, for the period set forth in said contract. A copy of said contract (hereinafter referred to as the Detroit Contract) is attached hereto as Exhibit A.

Section 7 of Article II of the Detroit Contract provides that it shall not become effective unless Eastern shall be able to arrange on or before February 1, 1936 for the financing of the construction of a pipe line connecting the eastern terminus of Eastern's existing pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line with the place of delivery specified in the Detroit Contract, as well as the reinforcement of the present pipe line of Eastern, since the present pipe line of Eastern is inadequate to deliver the quantity of gas called for by the Detroit Contract. In reliance on the present contract, Eastern has notified Detroit City Gas Company that it has been able to so arrange. The new pipe line extension must be constructed and ready for the delivery of gas not earlier than July 1, 1936, and not later than September 1, 1936. [fol. 230] The amount required by Eastern to increase its present pipe line capacity and for working capital is estimated to be approximately \$8,600,000, of which it is estimated that approximately \$4,000,000 will be required in the spring of 1936, and the remainder at some subsequent date or dates.

Indiana Gas Transmission Corporation (hereinafter referred to as Indiana), a Delaware corporation, is a subsidiary of Columbia Oil and owns a natural gas transmission pipe line extending from the eastern terminus of Eastern's

existing pipe line across the State of Indiana to a connection with the pipe line of The Ohio Fuel Gas Company at King Measuring Station, near Muncie, Indiana.

Michigan Gas Transmission Corporation (hereinafter called Michigan), a Delaware corporation, is a subsidiary of Columbia Gas, organized for the purpose of constructing a pipe line extending from a point on Indiana's pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract.

Now, Therefore, in consideration of the mutual covenants and agreements herein set forth, the parties hereto severally and not jointly, covenant and agree as follows:

1. Eastern agrees with the parties hereto as follows:

(a) That it will enter into a contract with Indiana for the delivery of gas through Indiana's pipe line to Michigan and will enter into a contract with Michigan for the delivery of gas by Michigan to Detroit City Gas Company, such contracts to contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified [fol. 231] in the Detroit Contract: or, in case Michigan shall acquire said line of Indiana extending from the Illinois-Indiana state line to Zionsville, will enter into a contract with Michigan providing for the delivery of said gas by Eastern to Michigan at the Illinois-Indiana state line, without the intervention of Indiana, the terms of such single contract to have substantially the same result to Eastern as the terms of the two contracts above referred to.

(b) That it will carry out all of the terms and provisions of said contracts or contract to the end that its obligations under the Detroit Contract may be fully performed.

(c) That it will apply the funds to be provided, as hereinafter stated, to increase the capacity of its existing main pipe line to the end that it shall be able to deliver to Indiana (or Michigan) at the Illinois-Indiana state line the quantities of natural gas at the times and at the pressure necessary to carry out the terms and provisions of its proposed contract with Indiana (or Michigan) referred to in Subdivision (a) of this Article I hereof.

(d) That it will offer pro rata to the holders of its Common Stock preemptive rights to subscribe to such number

of shares of its Common Stock, at such price per share as will yield not less than \$4,000,000, payable on or before April 1, 1936; and that it will sell to Columbia Oil, at such subscription price, all of the shares of Common Stock so offered to its other stockholders which shall not be subscribed for by them or by their assignees.

2. Columbia Gas agrees with the parties hereto as follows:

[fol. 232] (a) That it will cause Michigan to enter into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof and will cause Michigan to carry out the terms and provisions thereof.

(b) That it will cause Michigan to construct a natural gas transmission pipe line from a point on Indiana's existing pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract, said pipe line to be of a size, design and construction adequate to deliver at said place of delivery the maximum amount of natural gas called for by the Detroit Contract, and that it will furnish the funds necessary to enable Michigan to finance the construction of said pipe line.

(c) That, to provide the additional sum of \$4,600,000 required by Eastern for the further increase of its pipe line capacity, Columbia Gas will purchase from Eastern 6% Bonds of Series A under the Mortgage Trust Indenture of Eastern at par or, if the restrictions of said Mortgage Trust Indenture do not at the time permit this, will purchase Second Mortgage 6% Bonds of Eastern at par, which shall be exchangeable at the option of Columbia Gas into such Bonds of Series A when the restrictions of said Mortgage Trust Indenture to permit such exchange can be met.

(d) That it will advance, on open account to Columbia Oil until funded by the agreement of the parties, the necessary funds required by Columbia Oil to carry out its obligations under this Agreement.

3. Columbia Oil agrees with the parties hereto as follows:

[fol. 233] (a) That, upon the issuance by Eastern of rights to subscribe for shares of Common Stock of Eastern, as provided in Subdivision (d) of Article 1 of this Agree-

ment, it will (1) immediately subscribe for its pro rata proportion of such shares, and (2) on April 2, 1936, will either (a) purchase such of the shares of Common Stock of Eastern so offered for subscription as shall not have been subscribed for by the stockholders of Eastern or their respective assignees or (b) if the time for the payment of such subscriptions shall have been extended by Eastern to a date later than April 1, 1936, advance to Eastern the amount that would be payable if all of the subscriptions to such shares of Common Stock which may be exercised later than April 1, 1936, had been exercised, the portion of such advance represented by the subscription rights later exercised to be repaid by Eastern, with interest at the rate of 6% per annum, upon the exercise of such subscription rights.

(b) That it will cause Indiana to enter into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof, and will cause Indiana to carry out the terms and provisions thereof (unless Eastern shall elect to contract solely with Michigan as herein provided).

(c) That it will cause Indiana to make any necessary additions to or reinforcements of its existing pipe line necessary to enable Indiana to transport through said pipe line the maximum quantities of gas called for by the requirements of the proposed contract between Eastern and Indiana referred to in Subdivision (a) of Article 1 hereof, and that it will provide Indiana with the funds necessary therefor.

[fol. 234] 4. All of the parties hereto severally agree with each other as follows:

(a) The parties hereto recognize the possibility that the corporate relationships between the parties hereto, Indiana and Michigan, may be changed, through the acquisition by Columbia Gas or by Michigan of the stock or pipe line of Indiana or by the merger of Indiana and Michigan, or by a combination of the foregoing, or otherwise. In any such case, this Agreement and the contracts referred to in Subdivision (a) of Article 1 hereof shall be appropriately amended, provided that such amendments shall be such as to preserve the following basic principles:

(1) That Columbia Gas and Columbia Oil shall be responsible for their respective obligations with respect to

the financing of the reinforcement of Eastern's existing pipe line as set forth in Subdivision (c) of Article 2 and in Subdivision (a) of Article 3 hereof;

(2) That Columbia Gas and Columbia Oil shall each be severally responsible for the financing of that portion, if any, of the pipe line from the Illinois-Indiana State line to the Place of Delivery specified in the Detroit Contract, which shall at the time in question be owned by their respective subsidiaries;

(3) That the operating contracts among the several pipe line companies (including Eastern) shall contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified in the Detroit Contract; and [fol. 235] (4) That such operating contracts shall be as favorable to Eastern as the forms of contract referred to in Subdivision (a) of Article 1 hereof.

(b) That if, for any reason not involving a breach of the Detroit Contract by Eastern, Indiana or Michigan, the Detroit Contract shall fail to be performed, all the obligations of the parties hereto then unperformed shall become void and shall be of no further force or effect whatsoever.

(c) That this Agreement is subject to the securing of such consents to the taking of the action described hereunder from Federal and State authorities as may be necessary.

5. Anything herein contained to the contrary notwithstanding, Eastern shall have the right provided for in clause (b) of Article V of the Stipulation accompanying the Decree of the United States District Court for the District of Delaware entered on January 29, 1936, in the cause entitled United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, Defendants, being cause No. 1099 in Equity, which Stipulation was entered in the United States District Court for the District of Delaware contemporaneously with said Decree and is hereafter referred to as the Stipulation, to arrange for the financing of its undertakings under the Detroit Contract otherwise than through the assistance of Columbia Oil and Columbia Gas which they have agreed to furnish under their agreements herein. It is therefore agreed by all parties hereto that Eastern shall

have twenty days from the date of the curing of the default of its 6% Promissory Notes referred to in said clause of said Stipulation, or their retirement, in which to arrange for such financing from other sources. Eastern agrees that [fol. 236] it will forthwith take the appropriate action necessary for such curing of default or retirement of its Notes and that if, by the expiration of twenty days thereafter, it shall not have notified in writing Columbia Oil and Columbia Gas, by notice delivered to their respective New York City offices, that it has been able to arrange such financing from other sources, this Agreement shall be binding on Eastern and Columbia Oil and Columbia Gas according to its terms. Pending said period of twenty days, both Columbia Oil and Columbia Gas remain bound according to the terms hereof. In case Eastern shall be able to arrange said financing from other sources and shall so notify the other parties hereto, both Columbia Oil and Columbia Gas shall be freed of their obligations hereunder to provide such financing. Eastern agrees that it will submit any such alternative method of financing, before entering into it, to the Trustee appointed under said Decree for his approval and will not enter into it without his written approval.

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by Jas. L. Harrop, Vice-President. (Corporate Seal.)

[fol. 237] Attest: Leith V. Watkins, Secretary. Columbia Gas & Electric Corporation, by E. Reynolds, Jr., Vice-President. (Corporate Seal.)

Attest: H. H. Pell, Jr., Secretary. Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President. (Corporate Seal.)

Attest: W. A. Blind, Asst. Secretary.

[fol. 238]

EXHIBIT "D" TO REPORT

February 28, 1936

Panhandle Eastern Pipe Line Company
 31 Broadway
 New York City

DEAR SIRs:

I hereby notify you that I have approved the financial and contractual arrangement made by you with Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation on January 31, 1936, as indicated in the enclosed letter from me to them dated February 28, 1936.

It is understood that my approval will also be required of the terms and conditions of the contract or contracts to be made by you (as provided in said agreement of January 31, 1936) with Indiana Gas Transmission Corporation and Michigan Gas Transmission Corporation, or either of them.

Yours very truly, (S.) Gano Dunn, Trustee under the Decree dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware.

Encl.

[fol. 239]

EXHIBIT "E" TO REPORT

February 28, 1936

Columbia Oil and Gasoline Corporation
 Columbia Gas and Electric Corporation

GENTLEMEN:

I am hereby indicating my approval of your contract of January 31, 1936, with Panhandle Eastern Pipe Line Company, provided you agree that in connection with paragraphs 1 (d) and 3 (a) of said contract, I, as Trustee, may cause the board of Panhandle Eastern to extend the time for exercising subscription rights to the half of the proposed issue of common stock not offered to Columbia Oil until the private claims of Missouri-Kansas against the Columbia companies have been settled (either by litigation or compromise) or until such other time and under such con-

ditions as I may determine to be proper in the interests of Panhandle Eastern and its shareholders, but in no event later than January 1st, 1937, and that such extension of the time for exercising subscription rights shall have the same effect as the extension in the time of payment provided for by paragraph 3 (a) of said contract: and provided also that during the same period I may cause said Board to offer the subscription rights to the half of such stock not offered to Columbia Oil to such other person or persons who as a result of such settlement or non-settlement shall then be [fol. 240] entitled thereto. This would mean that Columbia Oil, immediately upon the offer of the stock, would subscribe to one half of the issue of common stock and would under paragraph 3 (a), as hereby modified, advance the amount represented by the remainder of the stock-issue.

Yours very truly, (S.) Gano Dunn, Trustee.

The above is hereby accepted: Columbia Gas & Electric Corporation, By (S.) E. Reynolds, Jr. Exec. Vice-Pres. Columbia Oil & Gasoline Corporation, By (S.) Charles A. Munroe.

[fol. 241]

EXHIBIT "F" TO REPORT

Gas Contract

Between

Panhandle Eastern Pipe Line Company

and

Michigan Gas Transmission Corporation

Dated March 17, 1936

Agreement made and entered into this 17th day of March, 1936, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware (hereinafter called Eastern), party of the first part, and Michigan Gas Transmission Corporation, a corporation of the State of Delaware (hereinafter called Michigan), party of the second part.

Eastern has entered into a contract, dated the 31st day of August, 1935, with Detroit City Gas Company, (here-

inafter called Detroit Company) whereby Eastern has contracted to supply the actual natural gas requirements of Detroit Company, up to the maximum amount therein specified, for the period and upon the terms and conditions set forth in said contract. A copy of said contract (hereinafter referred to as the Detroit Contract) is attached hereto as Exhibit A and made a part hereof.

Eastern represents that it owns, directly or through subsidiaries, natural gas production facilities and gas purchase contracts in the States of Texas and Kansas and a natural gas transmission pipe line extending from its production area to a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line (hereinafter called [fol. 242] the Place of Delivery); and that it will be able to have available at the Place of Delivery sufficient quantities of natural gas to fulfill the actual requirements of the Detroit Contract.

Michigan represents that it owns (through merger with Indiana Gas Transmission Corporation) a gas transmission pipe line extending from the Place of Delivery hereunder to a point near Muncie, Indiana, and that it has under construction a new pipe line extending from a point on its existing pipe line near Zionsville, Indiana (hereinafter referred to as the Zionsville tap) to the place of delivery specified in the Detroit Contract.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto as herein set forth, the parties hereto covenant and agree as follows:

Article I

Definitions

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

1. The "Effective Date" of this Agreement shall mean the first day of the calendar month immediately following the date when Detroit Company shall notify Michigan in writing of the completion of the necessary adjustments to all of its customers' appliances.

2. The "Date of Initial Delivery" shall mean the date on which Michigan shall notify Detroit Company and East-

ern of the completion of a connecting pipe line from the [fol. 243] Place of Delivery under this Agreement to the place of delivery specified in the Detroit Contract, and is ready to begin delivery of gas under the Detroit Contract, which date is to be not earlier than July 1, 1936, nor later than September 1, 1936.

3. The term "day", wherever used in this Agreement shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the Place of Delivery.

4. The term "month", wherever used in this Agreement, shall mean the period beginning at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the Place of Delivery, on the first day of a calendar month and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the said place of delivery on the first day of the next succeeding calendar month.

5. The term "Special Industrial Customer" shall mean an industrial customer for whom specific agreement as to the sale of gas is made, pursuant to the provisions of Section 5 of Article II of the Detroit Contract.

6. Whenever by the terms of this Agreement Eastern is required to assign the Detroit contract to Michigan, Eastern shall only be required to do so if the consent of the Detroit Company is obtained thereto.

Article II

Scope of Agreement

1. Michigan will notify Eastern in writing when it receives notice from Detroit Company, pursuant to Section 1 of Article II of the Detroit Contract; that the adjustment of [fol. 244] all of Detroit Company's customers' appliances is completed.

2. Commencing with the Effective Date of this Agreement, and for the period provided in Article III hereof, Eastern agrees to deliver to Michigan, and Michigan agrees, to take, the amounts of natural gas necessary to supply the actual natural gas requirements of Detroit Company under

the Detroit Contract together with such additional amounts of natural gas as Michigan shall require for its own use in carrying out this Agreement such as pumping and heating and to provide for leakage, but not in excess of 94,000,000 cubic feet or 953,160 therms (whichever shall be greater), per day.

3. Michigan agrees, subject to the delivery by Eastern to Michigan of the necessary amount of natural gas, to deliver to Detroit Company, in accordance with the terms and provisions of the Detroit Contract, the quantities of natural gas which Detroit Company shall from time to time actually require and be entitled to receive under the Detroit Contract; provided that, as to any natural gas in excess of the amount specified in Section 2 of Article II of the Detroit Contract, the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the requirements of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereinafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern and further provided that Michigan shall be entitled to retain, out of the payments made by Detroit Company for such additional natural gas, not less than the amount which [fol. 245] it would be entitled to retain if such additional natural gas were sold and accounted for on the same basis as the natural gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II.

Neither party shall, directly or through any affiliate, subsidiary or agent of either party, without the consent of the other, take any action which would entitle Detroit Company to reduce the price paid by it for gas under the provisions of Section 3 and Section 8 of Article II of the Detroit Contract. Nothing in this paragraph contained shall be effective if in violation of the Anti-Trust Laws of the United States or of any State.

4. If at any time in the future, while this Agreement remains in force, Eastern has additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan, then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to

accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, that Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and Eastern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis (whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern. The whole of the foregoing Section 4 is subject to the right of Michigan to make other purchases not to exceed 500,000,000 cubic feet of natural gas per year from sources other than Eastern provided the capacity of Michigan's pipe line is sufficient to admit such gas without displacing from the line natural gas supplied by Eastern under prior firm commitments. Additional gas delivered pursuant to this Section 4, shall be delivered under a separate agreement or agreements which shall contain such provisions as the circumstances may require, provided that no such pro-

visions shall be more burdensome on either party than the corresponding provisions of this Agreement, without the [fol. 247] consent of such party. If in any case the parties are unable to agree upon the terms (other than those herein determined) of any such separate agreement, it shall be submitted to three persons, one selected by each party and the third by the other two, whose majority decision as to the terms to be agreed upon shall be binding upon the parties and the agreement, as drawn in conformity with such decision, shall be entered into by the parties accordingly. If for any reason either party should fail to select a person to serve as above provided, or if the two selected should fail to select the third, the selection of all three shall be made by the then Attorney General of the United States.

5. In the event that Detroit Company shall have a prospective Special Industrial Customer, and Michigan or Eastern shall desire that natural gas be sold to Detroit Company to serve such customer, the parties hereto will endeavor to negotiate a separate contract to cover the terms and conditions of the delivery of such gas by Eastern to Michigan and by Michigan to Detroit Company.

6. Except as otherwise provided in Sections 4 and 5 of this Article II, all gas delivered by Eastern to Michigan shall be governed by all the provisions of this Agreement.

7. Inasmuch as the carrying out of this Agreement depends upon the completion by Michigan of a pipe line connecting the Place of Delivery hereunder with the place of delivery specified in the Detroit Contract (including the reinforcement of its existing pipe line from the Place of Delivery hereunder to the Zionsville tap and the construction of a new pipe line from the Zionsville tap to the place of delivery specified in the Detroit Contract), as well as on the reinforcement by Eastern of its present pipe line, since the present line of Eastern is inadequate to deliver the [fol. 248] quantity of gas called for by this Agreement without reinforcements, Michigan agrees to construct and place said new pipe line in condition for operation on or before the Date of Initial Delivery and to have the necessary reinforcements, as required, made to its existing pipe line, and Eastern agrees to have the necessary reinforcements, as required, made to its pipe line, to enable both parties to comply with the requirements of this Agreement.

Nothing herein contained shall be deemed to require Michigan to increase its pipe line and compressor station facilities in order to carry Eastern's gas in addition to that specified in Section 2 of this Article II, unless, in each case, (a) Michigan receives from carrying such additional gas from Eastern at least as favorable revenue in relation to the additional investment required therefor as it derives hereunder in respect to gas delivered by Eastern pursuant to Section 2 of this Article II, or (b) if Michigan is unwilling to provide the necessary additional capital funds on that basis, Eastern may provide such capital funds and Michigan shall use such funds to make the necessary additions to its pipe line, in return for which Eastern shall be entitled to and shall be fully satisfied with the share of the revenue which Michigan would be entitled to receive under clause (a) of this sentence (after deducting therefrom Michigan's increased operating expenses and taxes caused by the addition to its pipe line and the additional gas transported therethrough) for the period of the firm contract pursuant to which such additional gas is sold.

8. In the event that Detroit Company shall give Michigan the notice and other data referred to in Section 8 of Article II of the Detroit Contract, Michigan shall promptly furnish copies thereof to Eastern; and if within four months after the receipt of such copies Eastern shall agree to reduce [fol. 249] the price at which gas delivered hereunder to Detroit Company is to be accounted for by Michigan to an amount bearing the same proportion to the price specified in this Agreement as the price named in such notice from Detroit Company shall bear to the price specified in the Detroit Contract, Eastern and Michigan shall modify the Detroit Contract as contemplated by said Section 8 of Article II thereof so that Detroit Company shall not become entitled to terminate said contract and this Agreement shall be deemed to be modified accordingly and as so modified shall continue in effect. In the event Eastern shall not so agree to reduce the price of gas delivered hereunder and if Michigan makes arrangements elsewhere within two months after the expiration of the aforementioned four months' period to obtain gas at a price equivalent (taking into consideration differences in distance of transmission and other pertinent factors) to the price which Eastern refused to meet and agrees with Detroit Company to modify

the Detroit Contract in accordance with the aforesaid notice, then Michigan may terminate this Agreement by giving (within one month after Michigan has made arrangements to obtain such gas elsewhere) eight months' written notice to Eastern and Eastern will upon demand of Michigan assign the Detroit Contract to Michigan.

Article III

Term of Agreement

Subject to the provisions of Section 8 of Article II and Sections 1 and 2 of Article XVII hereof, this Agreement shall continue in effect during the continuance of the Detroit Contract and shall terminate coincidentally therewith.

[fol. 250]

Article IV

Quality

1. Eastern agrees that the gas delivered by it to Michigan hereunder shall be such as to enable Michigan to deliver to Detroit Company gas complying in all respects with the requirements of the Detroit Contract and that Eastern will indemnify Michigan and hold it harmless from any loss or damage that may be incurred by Michigan due to the failure of said gas to comply with such requirements.

2. Subject to the performance by Eastern of its obligation under Section 1 of this Article IV, Michigan agrees that all gas delivered by Michigan to Detroit Company shall comply in all respects with the requirements of the Detroit Contract and that Michigan will indemnify Eastern and hold it harmless from any loss or damage that may be incurred by Eastern due to the failure of such gas to comply with such requirements.

Article V

Measurements

1. The unit of the gas deliverable under this Agreement shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

2. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified

and corrected to saturated conditions, by the gross heating value of such gas in British thermal units per cubic foot, and by dividing the product by one hundred thousand (100,000).

[fol. 251] 3. Measurements of volume and heat value of gas delivered by Eastern to Michigan hereunder shall be at the following points:

Volume

(1) The volume of gas so delivered shall be measured at the meter or meters of Eastern, which, together with any building and with all other collateral equipment required for the final determination of volume, Eastern agrees to install, maintain and operate at the Place of Delivery. Inasmuch as deliveries by Eastern to Michigan under contracts other than this Agreement are also made or to be made through the same meter or meters at said Place of Delivery, the parties hereto, prior to the commencement of deliveries hereunder, will agree on a practical method of apportioning the total gas delivered by Eastern to Michigan at said Place of Delivery among the several contracts between the parties; and to facilitate such apportionment, Michigan will install, maintain and operate check meters, at such points on Michigan's existing main pipe line and the lateral lines connected therewith as Eastern may request, which will provide data for a reasonably accurate apportionment of the gas delivered by Eastern to Michigan at said Place of Delivery among the several contracts, present and future, between the parties hereto, including this Agreement.

Heat Value

(2) The heat value of gas delivered by Eastern hereunder shall be determined by a calorimeter or calorimeters of Eastern which Eastern agrees to install, maintain and [fol. 252] operate at the Place of Delivery hereunder or at such other place as may be agreed on between the parties.

Provided, however, that the volume and heat value of gas delivered each day for ultimate resale to each of Detroit Company's Special Industrial Customers shall be determined as provided in Section 3 of Article V of the Detroit Contract.

4. The measurement of volume and heat value of gas delivered by Eastern to Michigan hereunder shall be made in the following manner:

Volume

(a) The unit of volume for the purpose of measurement and for the determination of gross heating value shall be one (1) cubic foot of gas saturated with moisture at thirty (30) inches of mercury pressure and at sixty (60) degrees Fahrenheit temperature.

(b) The average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Place of Delivery above sea level or variations in such barometric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

[fol. 253] (d) The specific gravity of the gas shall be determined monthly by a joint test as near the first of the month as practicable or as much oftener by a joint test as is found necessary in practice. The method of test shall be by Edwards Balance or by such other method as shall be agreed upon by the parties. The regular test at the first of the month shall determine the specific gravity to be used in computations for the measurement of gas deliveries until the end of such month or until changed by subsequent test; any special test to be applicable from the day made until changed by subsequent test. It is provided, however, that by agreement between the parties a suitable continuous method may be adopted.

(e) The relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of delivery of gas to Michigan and thereafter monthly as near the first of the month as practicable or at such other times as is found necessary in practise.

(f) The deviation of the natural gas from Boyle's Law at the pressures under which said natural gas is delivered from Eastern to Michigan hereunder shall be determined at intervals of three months by a joint test or as much oftener as is found necessary in practice. The apparatus and the method to be used in making said tests shall be in accordance with the recommendations of the U. S. Bureau of Standards. Each test shall determine the correction to be used in computations for the measurement of natural gas deliveries until the next test, provided that, if in calculating volumes of gas delivered by Michigan to Detroit Company under the Detroit Contract Michigan does not [fol. 254] make any corrections for deviations from Boyle's Law, then the correction herein provided for shall be the difference between the correction corresponding to the pressure of the gas measured at the Point of Delivery specified herein and the correction corresponding to the pressure at which gas is measured at the Point of Delivery specified in the Detroit contract.

Heat Value

The gross heating value of the gas per cubic foot, as defined in Section 4 (a) above, shall be determined by taking the arithmetic average of the daily record of a recording calorimeter of a type to be mutually agreed upon, such recording calorimeter to be checked once each day, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by the U. S. Bureau of Standards and operated in accordance with methods recommended by the said Bureau. If upon any test any calorimeter shall be found to be not more than 2% in error, previous readings of such calorimeter shall be considered correct in computing the heat value of gas delivered by Eastern to Michigan. If upon any test any calorimeter shall be found to be in error by more than 2%, then any previous readings of such calorimeter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known or agreed upon, such correction shall be for a period extending over one-half the time elapsed since the date of last calibration, not exceeding a correction period of four (4) days.

[fol. 255] 5. The measurement of volume and heat value of gas delivered by Michigan to Detroit Company shall be

made as provided in Article V of the Detroit Contract, and Michigan will at its own expense install, operate and maintain the measuring equipment (including check measuring equipment) called for by the Detroit Contract.

Article VI

Metering Equipment

1. Eastern shall permit a representative of Michigan to accompany the representative of Eastern on any inspection of the measuring and recording equipment of Detroit Company pertaining to sales to Special Industrial Customers, made pursuant to Section 1 of Article VI of the Detroit Contract.

2. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting or adjusting done in connection with the other party's measuring equipment used in measuring deliveries hereunder and each party shall advise the other party of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the party owning the meter, but, upon the request of either party, the party owning the meter will submit to the other party such records and charts together with calculations therefrom for the other party's inspection and verification, subject to return within ten days after receipt thereof.

[fol. 256] 3. The total capacity of the gas measuring equipment installed by Eastern shall be sufficient to permit the testing and withdrawal of any individual meter from service without restricting the delivery of gas or interrupting the measurement of gas. - The installation, maintenance and operation of regulating equipment shall be such as not to affect the accuracy of the gas volume determination made from Eastern's meters. The meter or meters of Eastern shall be so located or protected as to assure freedom from pulsations, vibrations, or surges at the meter or meters from any cause in so far as such protection is obtainable within practicable limits mutually agreed upon to embody the best knowledge and information available.

4. Either party shall have the right to examine and approve, or object to, the plans of the other for the installation by it of such measuring equipment, and none of said installations shall be placed in service for the measurement of gas hereunder unless and until both parties are satisfied that such installation has been made in such manner as to permit of accurate determination of the quantity of gas to be delivered hereunder and to permit ready verification of the accuracy of measurement.

5. Michigan may install, maintain and operate such check measuring equipment as it shall desire, provided that such check meters and equipment shall be so installed as not to interfere with the operation of meters of Eastern. Eastern shall have access to such check measuring equipment at all reasonable hours but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by employees or agents of Michigan. Eastern shall have the right to be present, at its election, at the time of any installing, reading, cleaning, repairing, inspecting, calibrating or [fol. 257] adjusting done in connection with such check measuring equipment. Charts and records from said check measuring equipment, together with calculations therefrom, shall be available to Eastern for inspection and verification, subject to return within ten (10) days after receipt thereof.

6. If for any reason meters are out of service and/or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering:

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; or

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

7. From time to time, and at least once each month, on a date as near the first of the month as practicable, the

accuracy of Eastern's measuring equipment at the Place of Delivery shall be verified, at Eastern's expense, in the presence of representatives of Eastern and Michigan, and the parties shall jointly observe any adjustments which are made in such measuring equipment. If at any time either party shall notify the other party that it desires a special test of any meter, the parties hereto shall cooperate to [fol. 258] secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holdings of the tests in order that the other party may conveniently have its representative present.

8. If upon any test any meter is found to be not more than two per cent (2%) fast or slow, previous readings of such meters shall be considered correct in computing the volume of gas delivered by Eastern to Michigan; but the meter shall at once be properly adjusted to record accurately. If upon any test any meter shall be found to be inaccurate by an amount exceeding two per cent (2%), then any previous readings of such meter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known and/or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last calibration, not exceeding a correction period of sixteen (16) days. If any test of any measuring equipment of either party shall be made at the request of the other party, with the result that such measuring equipment shall be found to register accurately or within two per cent (2%) of accuracy, the party requesting such test shall bear the expense of such test. The expense of all other tests shall be borne by the owner of such measuring equipment.

9. The meters of Eastern at the place of delivery shall be read at seven o'clock Standard Time (or Daylight Saving Time whichever shall be in effect), in the morning of each day of each calendar month, or as near to that time as practical operating conditions will permit.

[fol. 259] 10. Each party hereto shall preserve for a period of at least five (5) years all test data, charts and other records resulting from performance by it of the terms of this Agreement.

Article VII

Accounting and Computation of Statements

1. All gas delivered by Eastern to Michigan pursuant to the provisions of Sections 4 and 5 of Article II hereof shall be accounted for at the respective prices agreed upon between Eastern and Michigan for such gas.

2. Subject to the provisions of Sections 3, 4 and 5 of this Article VII, all gas delivered by Eastern to Michigan hereunder, other than gas delivered pursuant to the provisions of Sections 4 and 5 of Article II hereof, shall be accounted for by Michigan to Eastern as follows:

Demand Charge:

For each month, a sum equal to twenty-six cents (26c) multiplied by the maximum daily demand, as hereinafter defined. The term "maximum daily demand" shall mean, by the greatest number of therms delivered on any one day during the immediately preceding winter period, consisting of the months of December, January, February and March, after deducting the sum of the demands of the Special Industrial Customers provided for herein on said day, except that the demand for each month prior to the expiration of the first winter period shall be billed on the actual [fol. 260] maximum daily demand established during the said month.

Commodity Charge:

If addition to the demand charge, the sum of one and four-tenths cents (1.4c) per therm for the total number of therms delivered by Eastern to Michigan hereunder during such month.

If the total quantity of therms taken by the Detroit Company in any one year is less than the minimum requirement provided in Section 4 of Article II of the Detroit Contract, then Michigan shall account for the therms representing such deficiency at the same average rate per therm as it has accounted for such gas as has actually been delivered to it in said year for the Detroit Contract.

3. All gas delivered between the Date of Initial Delivery and the Effective Date, shall be accounted for at a flat rate of two and four-tenths cents (2.4c) per therm.

4. If, at the end of any calendar year during the term of this Agreement, it shall be found that the provisions of Section 4 of Article VII of the Detroit Contract come into operation, then and in such case the amounts added to or deducted from the price paid by Detroit Company to Michigan for gas purchased under the Detroit Contract shall be apportioned between Michigan and Eastern hereunder in accordance with the changes in the costs of Michigan and Eastern, respectively, resulting in such increase or decrease and such apportionment shall be applied to the monthly payments by Michigan to Eastern hereunder. Each party agrees to cooperate with the other, to the fullest extent [fol. 261] possible, in respect to any action taken of desired to be taken in accordance with the provisions of said Section 4 of Article VII of the Detroit Contract.

5. If, pursuant to the provisions of Section 3 of Article II of the Detroit Contract, the price of gas under the Detroit Contract shall be reduced, then the price at which Michigan shall account to Eastern for gas delivered hereunder shall be reduced to an amount bearing the same proportion to the price specified in this Agreement as the decreased price under the Detroit Contract shall bear to the price specified therein.

6. Eastern agrees to reimburse Michigan for Eastern's share, amounting to \$176,440, of the contribution to be made to Detroit Company pursuant to Section 5 of Article VII of the Detroit Contract, by way of twelve equal monthly credits against the monthly payments to be made by Michigan to Eastern pursuant to Article IX of this Agreement, during the first year immediately following the Effective Date.

Article VIII—Billing

1. On or before the seventh day of each month, Michigan shall render to Eastern a statement showing for the preceding calendar month the volume of natural gas delivered to each Special Industrial Customer.

2. Eastern shall, on or before the twelfth day of each calendar month, render or cause to be rendered to Michigan a statement showing the following:

[fol. 262] (1) The total number of therms delivered by Eastern to Michigan during the preceding calendar month;

with complete computation showing procedure by which determined;

(2) The number of therms delivered by Michigan, for resale to each Special Industrial Customer during the preceding calendar month, in accordance with its aforesaid statement;

(3) The total number of therms delivered by Eastern to Michigan other than for ultimate resale to Special Industrial Customers during the preceding calendar month, in accordance with its aforesaid statements (1) and (2);

(4) The maximum daily demand applicable to the period; and

(5) The payment then due from Michigan to Eastern determined as provided in this Agreement and in any other Agreements between the parties relating to deliveries of gas for ultimate resale to Special Industrial Customers.

3. Each party shall have the right to examine at reasonable times the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this Agreement.

Article IX

Payments

1. Michigan shall render to Detroit Company each month the statement and charts called for by the provisions of Section 2 of Article VIII of the Detroit Contract, showing the amount of natural gas delivered to Detroit Company during the preceding calendar month, and shall be entitled to receive from Detroit Company on behalf of Eastern and itself the monthly payments made pursuant to Article IX of the Detroit Contract. Michigan shall promptly deposit the payments so received in a special account in a bank to be approved by Eastern and, within three days after the receipt of each such monthly payment from Detroit Company (but not less than three days after the receipt from Eastern of the statement provided for in Section 2 of Article VIII of this Agreement), Michigan shall account and pay to Eastern (without offset, counterclaim or other diminution), out of the moneys so received, for the natural gas

delivered by Eastern to Michigan hereunder during the preceding calendar month, according to the measurements, computations and prices herein provided and set forth in Eastern's statement to Michigan for said month, excepting that in the event that at any time Michigan shall dispute the correctness of any statement so rendered, then payment shall be made by Michigan for such amounts as it concedes to be correct and such amount as may be in dispute shall be settled by agreement or by court action. Nothing herein contained shall obligate Michigan to make any payment hereunder except out of payments received from Detroit Company, and Michigan does not in any way guarantee that Detroit Company will make the payments called for by the Detroit Contract.

2. Should Michigan fail to pay the amount of any statement rendered by Eastern as herein provided, when such amount is due, interest thereon shall accrue at the rate of 6% per annum from the original due date until the date of payment. If such default in payment continues for twenty [fol. 264] days after payment was originally due, Eastern may, in addition to any other remedy it may have hereunder, revoke the authority of Michigan to receive further payments from Detroit Company and may direct Detroit Company to make future payments directly to Eastern until such amount is paid. Whenever Eastern shall, pursuant to the provisions of this paragraph, receive payments under the Detroit Contract directly from Detroit Company, Eastern shall be entitled to retain the whole of such payments until it shall have received all payments due to it from Michigan under this Agreement, with interest on overdue payments as hereinabove provided, and shall pay to Michigan any balance and shall regrant to Michigan the authority thereafter to receive payments from Detroit Company as herein provided.

Any interest received by Michigan or Eastern from Detroit Company shall be divided between the parties in the same proportion as is the principal to which such interest applies.

3. If presentation of a statement by Eastern is delayed after the twelfth day of the month, then the time of payment shall be extended correspondingly, unless the delay in the presentation of the statement is occasioned by the delay on the part of Michigan in furnishing a statement of the

amount of natural gas delivered to Spécial Industrial Customers.

4. If it shall be found at any time that an error has been made in the amount billed in any statement rendered by Eastern against Michigan hereunder, such error shall be adjusted and payment made, but without interest, within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within sixty (60) days [fol. 265] from the date of discovery of any such error, but in any event within twelve (12) months from the date of such statement.

Article X

Operations by Eastern

1. Eastern agrees from time to time to make such alterations in its pipe line system as may be necessary to insure its adequate capacity for the delivery of gas to Michigan in accordance with the requirements of this Agreement, but not to exceed a maximum amount of 94,000,000 cubic feet of gas per day or 953,160 therms, whichever shall be greater.

2. Eastern agrees to comply in all respects with Section 2 of Article X of the Detroit Contract but Michigan shall have no rights under this Section 2 unless Detroit Company shall lawfully terminate the Detroit Contract on account of the breach of such Section by Eastern.

3. Inasmuch as all or part of the gas delivered by Eastern to Michigan hereunder is to be sold to Detroit Company, which is a public utility company operating in the metropolitan area of Detroit, and, inasmuch as one of Detroit Company's most important obligations is to supply the City of Detroit and its environs with gas, Eastern agrees to operate its pipe line in such manner as to assure, as nearly as is reasonably possible, continuous supply of gas in the quantity and of the quality actually required for distribution and consumption under this Agreement and the Detroit Contract.

[fol. 266]

Article XI

Michigan's Facilities

1. Michigan agrees to proceed promptly with the construction of the pipe line connecting the Zionsville tap with

the place of delivery specified in the Detroit Contract and to make, from time to time as required, any necessary reinforcements to its existing pipe line.

2. Michigan agrees to give Eastern notice at all times, as far in advance as operating conditions will permit, of the estimated daily, monthly and annual quantities of natural gas actually required hereunder and the anticipated peak hourly demands. Michigan may base such estimates on information received from Detroit Company, but shall not be bound by the quantities thereof.

3. Inasmuch as all or part of the gas delivered by Eastern to Michigan hereunder is to be sold to Detroit Company, which is a public utility company operating in the metropolitan area of Detroit, and, inasmuch as one of Detroit Company's most important obligations is to supply the City of Detroit and its environs with gas, Michigan agrees, subject to the performance by Eastern of its covenant contained in Section 3 of Article X hereof, to operate its pipe line in such manner as to assure, as nearly as is reasonably possible, continuous supply to Detroit Company of gas in the quantity and of the quality required by the Detroit Contract.

[fol. 267]

Article XII

Place and Point of Delivery

The Place of Delivery for all gas to be delivered by Eastern to Michigan hereunder shall be at Eastern's measuring station at the eastern terminus of Eastern's main pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line. The Point of Delivery shall be the eastern edge of the plot of ground on which said measuring station is situated, at the connection between the pipe lines of the respective parties hereto, unless Michigan shall install check measuring equipment on the same plot, in which case the Point of Delivery shall be the intake of Michigan's check measuring equipment.

Article XIII

Possession of Gas

1. As between the parties hereto, Eastern shall be in control and possession of the gas deliverable hereunder and

responsible for any damage or injury caused thereby until the same shall have been delivered to Michigan at the Point of Delivery, after which Michigan shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property and/or equipment of the indemnifying party, the Point of Delivery of the gas as hereinbefore specified to be the point of division of responsibility between the parties.

[fol. 268]

Article XIV.

Pressure

Eastern agrees to deliver or cause to be delivered gas hereunder at such pressures as Michigan may require, up to but not exceeding 225 pounds to the square inch gauge pressure, at the Point of Delivery. Eastern agrees that it will use due care and diligence to furnish gas to Michigan at a uniform pressure.

Article XV

Force Majeure

Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

2. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negli-

gence or in the event of its failure to use due diligence to [fol. 269] remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder; nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party and to Detroit Company as soon as possible after the occurrence relied on.

Article XVI

Warranty of Title to Gas

1. Eastern agrees that it will and hereby does warrant generally the title to all gas delivered under this Agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims and that it will indemnify Michigan and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, which are applicable before the possession of the gas passes to Michigan or which may be levied and assessed upon the delivery thereof to Michigan. In the event any adverse claim of any character whatsoever is asserted in respect of any of said gas, Michigan may withhold payments under this Agreement up to the amount of such claim without interest until such claim has been finally determined, as security for the performance of Eastern's obligations with respect to such claim under this Section, or until Eastern shall have furnished bond to Michigan, in an amount and with sureties satisfactory to Michigan, conditioned [fol. 270] for the protection of Michigan with respect to such claim.

2. Michigan agrees that, in the event that gas acquired by Michigan from any source other than Eastern shall be commingled in Michigan's pipe line with gas delivered by Eastern to Michigan hereunder and shall so be delivered to Detroit Company, it will and hereby does warrant generally the title to all such gas from other sources so delivered to Detroit Company and the right to sell the same and

that such gas, from other sources shall be free and clear from all liens and adverse claims and that it will indemnify Eastern and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses (including all costs and expenses arising out of Eastern's warranty of title to gas delivered under the Detroit Contract) arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon which are applicable before the possession of such gas passes to Detroit Company or which may be levied or assessed upon delivery thereof to Detroit Company.

Article XVII

Remedies

1. In the event that Detroit Company terminates the Detroit Contract for any of the causes specified therein, then this Agreement shall be automatically terminated as of the same date on which the Detroit Contract shall be terminated, without prejudice to the right of Eastern to collect any amounts then due it in respect of gas delivered prior to the effective date of the termination, subject to any proper counterclaims or set-offs of Michigan, and without [fol. 271] waiver of any remedy to which the party not in default may be entitled for violation of this Agreement. Such termination of this Agreement shall not in any way affect any contracts entered into between the parties hereto pursuant to Section 4 of Article II hereof.

2. In the event that Michigan shall fail to pay any statement rendered it by Eastern for gas delivered under this Agreement within sixty (60) days after the same became originally due, Eastern may, in addition to all other remedies which it may have at law in addition to those provided herein, at any time thereafter by written notice to Michigan, cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, provided that this remedy shall not be available or effective in case of default in the payment of disputed statements as elsewhere provided herein.

3. The remedies herein specifically provided for are cumulative, and in addition to all rights and remedies for specific performance or for damages, including loss of re-

turn and profits, or otherwise, which either party may have at law or in equity for breach by the other party of any agreement, condition or covenant contained herein, which rights and remedies neither Michigan nor Eastern shall in anywise be deemed to have waived either by the expressed provisions for the foregoing remedies or by the exercise of any thereof; provided, however, that in the event that this Agreement be cancelled or terminated by reason of the provisions of Section 1 of Article XV hereof, there shall be no liability upon the part of either party to the other, excepting such liability as remains unsettled between the parties arising from the delivery of gas and such transactions as were had and completed between the parties prior to cancellation.

[fol. 272] 4. If Eastern shall at any time fail to deliver or cause to be delivered gas in volumes and/or at such pressures as Michigan may be entitled to require up to the limits otherwise herein provided, Eastern shall, unless relieved by the terms of Article XV hereof, reimburse and indemnify Michigan for any expenses, loss or damage which it may sustain by reason of such failure, including any loss or damage caused by the necessity of obtaining gas elsewhere to remedy such deficiency.

Article XVIII

Miscellaneous

There shall be no modification of the terms and provisions hereof except by the execution of supplementary written contracts.

2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Eastern or Michigan, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; but otherwise neither party shall assign this Agreement or any

of its rights hereunder unless it shall first have obtained the consent thereto of the other party.

4. Any notice, request, demand, statement or bill provided for in this Agreement shall be in writing and shall be duly [fol. 273] delivered when mailed by registered mail to the Post Office address of either of the parties hereto, as the case may be, as follows:

Eastern: Panhandle Eastern Pipe Line Company, 101 West 11th Street, Kansas City, Mo.

Michigan: Michigan Gas Transmission Corporation, 116 East Wayne Street, Fort Wayne, Ind.

or at such other address as either party shall designate for the purpose; except that routine communications (including monthly statements and payments) shall be duly delivered when mailed by either registered or ordinary mail.

5. Promptly after the execution of this Agreement Eastern shall notify Detroit Company of the execution hereof and shall request Detroit Company to deliver all notices, statements and other communications and to make all payments under the Detroit Contract directly to Michigan. Each of the parties hereto agrees that, upon the receipt from Detroit Company of any communication affecting the Detroit Contract or this Agreement (other than routine communications not affecting the other party), it will immediately deliver a copy of such communication to the other party.

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by [fol. 274] their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by James L. Harrop, Vice-President. (Corporate Seal.) Attest: Leith V. Watkins, Secretary.

Michigan Gas Transmission Corporation, by Walter C. Beckjord, President. (Corporate Seal.) Attest: H. H. Pell, Jr., Secretary.

[fol. 275]

EXHIBIT A

Gas Contract between Panhandle Eastern Pipe Line Company and Detroit City Gas Company, Dated August 31, 1935

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[fol. 282] Gas Contract

Panhandle Eastern Pipe Line Company

and

Detroit City Gas Company

Agreement made and entered into this 31st day of August, 1935, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware (hereinafter called Seller), party of the first part, and Detroit City Gas Company, a corporation of the State of Michigan (hereinafter called Buyer), party of the second part.

Buyer represents that it owns and operates a gas distribution system in and adjacent to the City of Detroit, Michigan through which it is engaged in the distribution of gas to the public, and that it desires to obtain a supply of natural gas.

Seller represents that it owns, directly or through subsidiaries, natural gas production facilities and gas purchase contracts in the States of Texas and Kansas and a natural gas transmission pipe line extending from its production area to a point on the Illinois-Indiana state line; that subject to the provisions hereof it will be able to have available at said eastern terminus of its pipe line at the Illinois-Indiana state line, sufficient quantities of natural gas to fulfill the requirements of this Agreement; and that, likewise subject, it contemplates constructing or arranging for the construction of a pipe line to connect the eastern terminus of its pipe line with Buyer's distribution system at or near the City of Detroit.

[fol. 283]

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Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto as herein set forth, the parties hereto covenant and agree as follows:

Article I.

Definitions

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

1. The "Effective Date" of this Agreement shall mean the first day of the calendar month immediately following the date when Buyer shall notify Seller in writing of the completion of the necessary adjustments to all of its customers appliances.

2. The "Date of Initial Delivery" shall mean the date on which Seller shall notify Buyer of the completion of a connecting pipe line from the eastern terminus of its existing pipe line at the Illinois-Indiana state line to the Buyer's River Rouge plant, and is ready to begin delivery of gas under this contract, which Seller agrees shall not be earlier than July 1, 1936, nor later than September 1, 1936.

3. The term "day", wherever used in this Agreement, shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock A. M. Standard Time

or Daylight Saving Time, whichever shall be in effect at the place of delivery.

4. The term "month", wherever used in this Agreement, shall mean the period beginning at seven o'clock A. M. [fol. 284] Standard Time or Daylight Saving Time, which-

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ever shall be in effect at the place of delivery, on the first day of a calendar month and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the said place of delivery on the first day of the next succeeding calendar month.

5. The term "Special Industrial Customer" shall mean an industrial customer for the gas supply for whom Seller and Buyer make specific agreement outside of that provided for in Article VII, Section 2 hereof.

Article II

Scope of Agreement

1. Commencing with the Date of Initial Delivery, Buyer will proceed with due diligence to make necessary adjustments of all of its customers appliances and will complete them within six months. Buyer will notify Seller in writing when the adjustment of all of its customers appliances is completed.

2. Commencing with the Effective Date of this Agreement, and for the period provided in Article III hereof, Seller agrees to sell and deliver to Buyer, and Buyer agrees to buy from Seller, all of the natural gas requirements of Buyer for distribution and sale to any and all of its present and future customers and for its own use, but not in excess of ninety million cubic feet or its equivalent, nine hundred and twelve thousand six hundred therms, per day which represents all of the gas Seller now believes it can safely contract to furnish Buyer at this time.

[fol. 285]

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3. In consideration of the covenant in the last preceding paragraph, Seller agrees that if at any time in the future, while this Agreement remains in force, Seller, its assignee,

or any successor corporation carrying out the terms of this Agreement, has additional gas which it desires to distribute in the territory served by Buyer, Buyer shall, for the balance of the period during which this Agreement shall remain in force, have the right to purchase such gas in such amount as it is willing to take under a firm commitment and at such price and under such terms and conditions as Seller could otherwise obtain for such gas.

The Seller further agrees that if, during the period that this Agreement shall remain in force, it should sell and deliver natural gas at a price less than that charged Buyer under this Agreement to another or others than Buyer for use or resale within the territory now served by Buyer with gas purchased hereunder, it will simultaneously reduce the contract price to Buyer hereunder to the lowest price obtained by it for gas sold to such party or parties. If conditions of sale be different, the amounts being substantial, Seller shall grant Buyer the right to change this Agreement to conform to such conditions in order to obtain such lower price.

4. Seller shall not be required to supply hereunder more than 90 million cubic feet or its equivalent nine hundred and twelve thousand six hundred therms of natural gas in any one day. Buyer agrees to take and pay for not less than the following annual amounts of natural gas, commencing with the Effective Date hereof:

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First Year	81,120,000 therms
Second Year	101,400,000 therms
Third Year	121,680,000 therms
Fourth Year	141,960,000 therms
Fifth Year and each year thereafter	152,100,000 therms

Buyer agrees that it will not take on its maximum day more than twice the number of therms which it takes on the average day of the twelve month period to which said maximum day applies in the computation of demand charge. The term "maximum day" is understood to be that day during either December, January, February or March of the said twelve months period upon which the greatest number of therms has been taken.

5. In the event that Buyer shall have a prospective Special Industrial Customer and shall desire to purchase natural gas to serve such customer, the parties hereto will endeavor to negotiate a separate contract to cover the price at which Seller will furnish such gas to Buyer. Each such separate contract shall depend upon Seller's having available a sufficient supply of natural gas and shall include a provision for the temporary curtailment or discontinuance of service thereunder in the event of an insufficiency of Seller's supply for other deliveries under this Agreement.

It is agreed that if Seller shall refuse to furnish Buyer up to 20,800,000 therms of gas per year to serve such Special Industrial Customers at a price not less than the commodity charge specified in Article VII, Section 2, then Buyer's obligation to take the minimum quantities specified in the next preceding Section of this Agreement shall be reduced by such quantities as Seller shall fail to supply Buyer for such industrial customers, but not to exceed 20,800,000 therms per year.

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6. Except as otherwise provided in Section 5 of this Article II, all gas sold by Seller to Buyer shall be governed by all the provisions of this Agreement.

7. Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the city of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of

such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery.

Recognizing the desire of Buyer to obtain a supply of natural gas at the earliest possible moment, as well as the importance thereof to Buyer, Seller agrees that as soon

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as it becomes apparent to it that it will be unable to finance the construction of the connecting pipe line or construct the same, or that a contract cannot be made for financing the reinforcement of Seller's pipe line, whereby this Agreement would become null and void, it will give to Buyer written notice of such facts and a release of Buyer from any liability hereunder leaving Buyer then free to obtain or contract for a supply elsewhere.

8. In the event that an adequate supply of natural gas sufficient to meet all of Buyer's requirements for the unexpired term of this Agreement is developed by responsible parties other than Seller and is made available to Buyer in its served territory by the actual construction of a pipe line thereto, or in the event that such a supply is similarly made available to a competitor serving and distributing gas in such territory at a schedule of rates which applied to the deliveries of gas to Buyer hereunder during the preceding twelve months would result in a lower amount than under the rates provided for by this Agreement, then and in that event Buyer may give notice to Seller of such available gas and with such notice shall furnish to Seller the rate schedules aforesaid, together with other data and particulars pertinent under this Article, and Seller shall have six months after date of receipt of such notice and rate schedules, data and particulars, within which to meet such lower obtainable price of gas, and in the event of the failure of Seller to agree to modify this Agreement accordingly within said six months period Buyer shall have the option to terminate this Agreement at any time within twelve months after expiration of said six months period upon six months written notice to Seller.

Article III

Term of Agreement

The term of this Agreement shall be for a period of fifteen (15) years beginning with the Effective Date and from year to year thereafter, after the expiration of said fifteen (15) year period, until cancelled on eighteen (18) months' notice in writing given by either party to the other.

Article IV

Quality

1. Seller agrees that the gas delivered hereunder shall be natural gas (a) except that said natural gas shall at all times comply with the requirements as to purity expressed in this Agreement; (b) that Seller may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane, and/or other hydro-carbons (excepting methane) from said natural gas, or may enrich said natural gas to the extent required to meet the gross heating value requirements hereof before delivery thereof to Buyer; and (c) that Seller may subject or permit the subjection of the gas to compression, cooling, cleaning and other processes to such an extent as may be required in its transmission from the wells to the point or points of delivery.

The gas delivered hereunder is assumed but not guaranteed to have a gross heating value of 1014 British

thermal units per cubic foot. In no event shall the gross heating value of the gas delivered hereunder fall below 950 British thermal units per cubic foot nor exceed 1100 British thermal units per cubic foot, and the variation in gross heating value shall not be more than 100 British thermal units per cubic foot in any six months period.

2. Seller agrees that the gas delivered hereunder

(a) shall be commercially free from solid and/or liquid matter, dust, gums and/or gum forming constituents;

(b) shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet and that this

purity requirement shall be determined by quantitative test after presence of H_2S has been indicated by qualitative test which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five cubic feet per hour, the gas not impinging from a jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas;

(c) shall not contain more than twenty (20) grains of total sulphur per hundred (100) cubic feet;

(d) shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the temperature and pressure of the gas in the main pipe line at a point approximately fifty (50) feet in advance

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of Seller's meter inlet header, and that the water shall not be present in liquid phase;

provided, that if Buyer or any purchaser from Buyer shall at any time be required by a duly constituted public regulatory authority to deliver to its customers gas containing less hydrogen sulphide and/or less total sulphur than above specified, Seller shall upon reasonable notice from Buyer cause the gas delivered hereunder to conform to such new requirement at Seller's expense.

3. Seller agrees that if the gas offered for delivery by it hereunder shall fail at any time to conform to any of the specifications hereinabove set forth, then Buyer may at its option refuse to accept delivery of or accept delivery of such gas and itself make changes necessary to bring such gas into conformity with such specifications, and Seller shall reimburse Buyer for any reasonable expense incurred by Buyer in effecting such changes, or for any reasonable expense otherwise incurred by Buyer by reason of the failure of the gas to conform to such specifications.

Article V

Measurements

1. The sales unit of the gas deliverable under this Agreement shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

2. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the gross heating value of such gas in British thermal units per cubic foot,

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and by dividing the product by one hundred thousand (100,000).

3. Measurements of volume and heat value of gas hereunder shall be at the following points:

Volume

(1) The volume of gas delivered by Seller hereunder shall be measured at the meter or meters of Seller, which, together with building and with all other collateral equipment required for the final determination of volume, Seller agrees to install and maintain and which will be operated by Seller at the Place of Delivery.

Heat Value

(2) The heat value of gas delivered by Seller hereunder shall be determined by a calorimeter or calorimeters of Seller which Seller agrees to install and maintain and which shall be operated by Seller at the Place of Delivery.

Provided, however, that Buyer shall install and operate at its own expense, meters to determine the volume of gas delivered each day to each of Buyer's Special Industrial Customers, the measurements to be corrected to the measurement basis specified in Section 4 (a) of this Article V.

4. The measurement of volume and heat value of gas hereunder shall be made in the following manner:

Volume

(a) The unit of volume for the purpose of measurement and for the determination of gross heating value shall be one (1) cubic foot of gas saturated with moisture at thirty

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(30) inches of mercury pressure and at sixty (60) degrees Fahrenheit temperature.

(b) The average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Place of Delivery above sea level or variations in such barometric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

(d) The specific gravity of the gas shall be determined monthly by a joint test as near the first of the month as practicable or as much oftener by a joint test as is found necessary in practice. The method of test shall be by Edwards Balance or by such other method as shall be agreed upon by the parties. The regular test at the first of the month shall determine the specific gravity to be used in computations for the measurement of gas deliveries until the end of such month or until changed by subsequent test; any special test to be applicable from the day made until changed by subsequent test. It is provided, however, that by agreement between the parties a suitable continuous method may be adopted.

(e) The relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of delivery of gas to Buyer and at such times thereafter as may be agreed upon by both parties.

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Heat Value

The gross heating value of the gas per cubic foot, as defined in Section 4 (a) above, shall be determined by taking,

the arithmetic average of the daily record of a recording calorimeter of a type to be mutually agreed upon, such recording calorimeter to be checked once each day, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by the U. S. Bureau of Standards and operated in accordance with methods recommended by the said Bureau. If upon any test any calorimeter shall be found to be not more than 2% in error, previous readings of such calorimeter shall be considered correct in computing the heat value of gas delivered by Seller to Buyer. If upon any test any calorimeter shall be found to be in error by more than 2%, then any previous readings of such calorimeter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known or agreed upon, such correction shall be for a period extending over one-half the time elapsed since the date of last calibration, not exceeding a correction period of four (4) days.

Article VI

Metering Equipment

1. Buyer shall provide in all contracts with Special Industrial Customers that Seller shall have the right at all times during business hours to inspect the measuring and recording equipment of Buyer pertaining to sales to such Special Industrial Customers.

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2. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting or adjusting done in connection with the other party's measuring equipment and each party shall advise the other party of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the party owning the meter, but, upon the request of either party, the party owning the meter will submit to the other party such records and charts together with calculations therefrom for the other party's inspection and verification, subject to return within ten days after receipt thereof.

3. The total capacity of the gas measuring equipment installed by Seller shall be sufficient to permit the testing and withdrawal of any individual meter from service without restricting the delivery of gas or interrupting the measurement of gas. The installation, maintenance and operation of regulating equipment shall be such as not to affect the accuracy of the gas volume determination made from Seller's meters. The meter or meters of Seller shall be so located or protected as to assure freedom from pulsations, vibrations, or surges at the meter or meters from any cause in so far as such protection is obtainable within practicable limits mutually agreed upon to embody the best knowledge and information available.

4. Either party shall have the right to examine and approve, or object to, the plans of the other for the installation by it of such measuring equipment, and none of said installations shall be placed in service for the measurement of gas hereunder unless and until both parties are satisfied,

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or it shall be determined by arbitration, that such installation has been made in such manner as to permit of accurate determination of the quantity of gas to be delivered hereunder and to permit ready verification of the accuracy of measurement.

5. Seller agrees to provide without expense to Buyer check measuring equipment together with a suitable site for the location of said check measuring equipment which shall be operated by Buyer. Any property of Buyer which may be placed thereon shall be and remain Buyer's property. Such check meters and equipment shall be so installed as not to interfere with the operation of meters of Seller. Seller shall have access to such check measuring equipment at all reasonable hours but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by employees or agents of Buyer. Seller shall have the right to be present, at its election, at the time of any installing, reading, cleaning, repairing, inspecting, calibrating or adjusting done in connection with such check measuring equipment or with Buyer's meters measuring gas to Special Industrial Customers. Charts and records from said check measuring equipment, together with calculations

therefrom, shall be available to Seller for inspection and verification, subject to return by Seller within ten (10) days after receipt thereof.

6. If for any reason meters are out of service and/or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service and/or out of repair shall be estimated and agreed upon by the

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parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering;

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; or

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

7. From time to time, and at least once each month, on a date as near the first of the month as practicable, the accuracy of Seller's measuring equipment shall be verified, at Seller's expense, in the presence of representatives of both Seller and Buyer, and the parties shall jointly observe any adjustments which are made in such measuring equipment. If either party at any time shall notify the other that it desires a special test of any meter, the parties shall cooperate to secure the immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representative present.

8. If upon any test any meter is found to be not more than two per cent. (2%) fast or slow, previous readings of such meters shall be considered correct in computing the volume of gas delivered by Seller to Buyer; but the meter shall at once be properly adjusted to record accurately. If upon any test any meter shall be found to be inaccurate

by an amount exceeding two per cent. (2%), then any previous readings of such meter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known and/or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last calibration, not exceeding a correction period of sixteen (16) days.

9. The meters of Seller shall be read at seven o'clock Standard Time (or Daylight Saving Time whichever shall be in effect), in the morning of each day of each calendar month, or as near to that time as practical operating conditions will permit.

10. Each party hereto shall preserve for a period of at least five (5) years all test data, charts and other records resulting from performance by it of the terms of this Agreement.

Article VII

Rate and Computation of Bills

1. All gas purchased by Buyer from Seller for resale to Special Industrial Customers shall be paid for at the respective prices agreed upon between Buyer and Seller for such gas.

2. For all gas purchased by Buyer from Seller hereunder, other than gas purchased for resale to Special Industrial Customers, subject to the provisions of Sections 3, 4 and 5 of this Article VII, the price shall be as follows:

Demand Charge:

For each month, a sum equal to thirty-eight cents (38¢) multiplied by the maximum daily demand, as hereinafter defined. The term "maximum daily demand" shall mean the greatest number of therms delivered on any one day during the immediately preceding winter period, consisting of the months of December, January, February and March, after deducting the sum of the demands of the Special Industrial Customers provided for herein on said day, ex-

cept that the demand for each month prior to the expiration of the first winter period shall be billed on the actual maximum daily demand established during the said month.

Commodity Charge:

In addition to the demand charge, the sum of one and one-half ($1\frac{1}{2}\text{¢}$) per therm for the total number of therms delivered by Seller to Buyer hereunder during such month.

If the total quantity of therms taken in any one year is less than the minimum requirement provided in Section 4 of Article II, then for the therms representing such deficiency Buyer shall pay at the same average rate per therm as it has paid for such gas as it has actually taken in said year.

3. For all gas delivered between the Date of Initial Delivery and the Effective Date, the price shall be at a flat rate of three cents (3¢) per therm.

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4. If, at the end of any calendar year during the term of this Agreement, it shall be found that by reason of any legislation enacted by the Federal Government, or regulations or orders of any of its governmental agencies, or, as hereinafter limited and defined, by reason of any state or local legislation, or regulations or orders of state or local governmental agencies, there has been a direct increase or decrease in the operating costs of Seller's transmission line, applicable and incidental to the gas delivered to Buyer hereunder, in respect only to the rates of wages, hours of labor, prices of materials and supplies and rates of taxation, as a result of which (computed as hereinafter set out) such operating costs have for such year just passed increased or diminished 20% or more from the costs experienced by Seller during the first twelve calendar months of operation after the Effective Date of this Agreement, then and in such event one-half of one-twelfth of the amount of such increase or decrease shall be added to or deducted from the charge for gas as provided in paragraph 2 of Article VII for each month of the ensuing year.

In computing the amount of any such increase or decrease, applicable to the gas sold to Buyer, the increases or decreases due to national legislation, regulations or

orders shall be that proportion of the total amount which the gas sold to Buyer hereunder (other than to Special Industrial Customers) bears to the total gas transmitted by the Seller in its pipe line; and due to State of Michigan and local legislation, regulations or orders shall be that proportion of the total amount which the gas sold to Buyer hereunder (other than to Special Industrial Customers) bears to the total gas transmitted and sold by Seller in said State and locality respectively.

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In the event of the imposition of a production tax or other similar tax in Texas or Kansas or either of them, the increase or decrease due thereto shall be determined by first ascertaining the quantity of gas produced and/or purchased by Seller in such State and delivered to said pipe line and upon which such tax has been paid. Buyer shall be deemed to have received of such gas the same proportion thereof that the gas purchased by Buyer bears to the total gas transmitted by Seller in its pipe line. In general the applicable increase or decrease due to such State legislation, regulations or orders shall be that proportion of the increased cost which the quantity of gas sold to Buyer bears to the total quantity transmitted beyond the boundary line of such State.

Adjustments shall be made thereafter annually, at the close of each calendar year and in the same manner, but if at the end of any calendar year it be found that the increase or decrease for such calendar year, based upon the costs during the first twelve calendar months period of operation, and computed as herein provided, be less than 20%, then the charge for gas set forth in Section 2 of Article VII shall remain in force for the next succeeding calendar year.

In computing increase or decrease in taxation there shall not be considered changes in income taxes, excess profits taxes, capital stock taxes, franchise taxes or general property taxes, or such taxes as by plain provision or intent of the law are to be paid by the party taxed and not passed on to the consumer. Neither shall there be considered any increase or decrease in costs or regulation by any state or national commissions engaged purely in the regulation of utilities or carriers.

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As soon as possible after the close of each calendar year Seller shall furnish Buyer with a computation showing the increase or decrease in such operating costs, and such amount as it claims the charges for gas should be increased or decreased for the ensuing year. For the purpose of determining the accuracy of such computation and the facts upon which it is based, Buyer shall have the right at any reasonable time or times, by its duly authorized agents or accountants, but no more than once a year, to audit the pertinent records and books of account of Seller, and of any successor carrying out this Agreement.

5. As Seller's share in Buyer's cost of changing over its distribution system to adapt it to the distribution of natural gas or mixed gas, Seller will contribute to Buyer the sum of \$220,000, by way of twelve equal monthly credits against the monthly bills to be rendered by Seller to Buyer pursuant to Article VIII of this Agreement, and during the first year immediately following the Effective Date.

Article VIII

Billing

1. On or before the fifth day of each month, Buyer shall render to Seller a statement showing for the preceding calendar month the volume of natural gas shown by its meters to have been delivered by Buyer to each of its Special Industrial Customers.

2. Seller shall, on or before the tenth day of each calendar month, render to Buyer a statement showing the following:

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(1) The total number of therms delivered by Seller to Buyer during the preceding calendar month; with complete computation showing procedure by which determined;

(2) The number of therms delivered by Buyer to each of the Special Industrial Customers during the preceding calendar month, in accordance with its aforesaid statement.

(3) The total number of therms delivered by Seller to Buyer for other than Special Industrial Customers during

the preceding calendar month, in accordance with its aforesaid statements (1) and (2);

(4) The maximum daily demand applicable to the period; and

(5) The payment then due from Buyer to Seller determined as provided in this Agreement and in any other Agreements between the parties relating to sales to Special Industrial Customers.

Such statements shall be accompanied by charts showing the basis on which the daily deliveries in therms were computed.

3. Each party shall have the right to examine at reasonable times the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this Agreement.

Article IX

Payments

1. Buyer agrees to pay Seller at its designated office on or before the twentieth day of each calendar month for

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natural gas delivered during the preceding month, according to the measurements, computations and prices herein provided and billed by Seller in the statement for said month, excepting that in the event that at any time Buyer shall dispute the correctness of any statement so rendered, then payment shall be made by Buyer for such amounts as it concedes to be correct and such amount as may be in dispute shall be settled by agreement by mutual submission to arbitration, or by court action. Any payment by Buyer shall not prejudice its right to adjustment of any bill to which it has taken exception or may subsequently take exception within a reasonable time after discovery of its right to such adjustment, but in any event within twelve (12) months from date of bill.

2. Should Buyer fail to pay the amount of any bill for gas rendered by Seller as herein provided, when such amount is due, interest thereon shall accrue at the rate of

6% per annum from the due date until the date of payment. If such failure to pay continues for 60 days after payment is due, Seller may, in addition to any other remedy it may have hereunder, suspend further delivery of gas until such amount is paid, provided, however, that if the Buyer shall, in good faith, either dispute the amount of any such bills or parts thereof, or present a counter-claim or offset against the same, and shall at any time thereafter within thirty (30) days of a demand made by Seller, furnish a good and sufficient surety bond, in amount and with sureties to be approved by Seller, conditioned upon the payment of any amounts ultimately to be found due upon such bills after a final determination, which may be reached either by agreement, arbitration award or judgment of the courts as may be the case, then such bills shall not be deemed to be due

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within the meaning of this paragraph unless and until default be made in the conditions of such bond.

Except as Seller may question the ability of Buyer to respond in damages, it need not demand or require such bond and it may permit such disputed amounts to accumulate, but in the event Seller shall require Buyer to give bond then Seller shall be obligated to institute appropriate legal action to determine such dispute within one year after the date of the bills in question, or unless by agreement of the parties the matter be submitted to arbitration within such period.

3. If presentation of bill by Seller is delayed after the tenth day of the month, then the time of payment shall be extended correspondingly, unless the delay in the presentation of the bill is occasioned by the delay on the part of Buyer in furnishing a statement of the amount of natural gas delivered to Special Industrial Customers.

4. If it shall be found at any time that Buyer has been overcharged in any form whatsoever under the provisions hereof, and Buyer shall have actually paid the bills containing such overcharges, Seller shall refund such amount or amounts of overcharges within thirty (30) days of the determination thereof, with interest thereon at the rate of six per cent (6%) per annum from the times respectively

when such overcharges were paid until the date of refund, provided, however, that claim therefor shall have been made within sixty (60) days from the date of discovery of any such overcharges, but in any event within twelve (12) months of bill.

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Article X

Operations by Seller

1. Seller agrees that all construction of pipe lines shall be of adequate capacity for the delivery of gas to Buyer in accordance with the requirements of this Agreement, but not to exceed a maximum amount of 90,000,000 cubic feet of gas per day or its equivalent nine hundred and twelve thousand six hundred therms.

2. In addition to the sources of supply, contracts for the purchase of gas, and transmission facilities which Seller represents it now holds or has available through subsidiaries, Seller agrees at all times to hold or have available through subsidiaries, sufficient gas acreage and gas production facilities to meet the requirements of this Agreement and its other obligations for the sale of gas and to have sufficient gas available and/or to hold long term gas purchase contracts with responsible parties calling for the sale and delivery to it of gas in sufficient quantities for the aforesaid purposes and to own or have available through subsidiaries or contract rights a system of pipe lines which shall be of adequate size for the transmission of gas from the various sources of supply to the Place of Delivery hereunder.

3. It is further understood and agreed that Buyer is a public utility company operating in the metropolitan area of Detroit, Michigan, and that, inasmuch as one of its most important obligations is to supply the City of Detroit and its environs with gas, Seller shall operate its pipe line, or cause the same to be operated, in such manner as to assure, as nearly as is reasonably possible, continuous supply of gas in the quantity and of the quality required by this Agreement.

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Article XI

Buyer's Facilities

1. Buyer agrees to make such changes in its distribution system as may be necessary to enable it to distribute natural gas and agrees to proceed to make such changes in time to be prepared to receive deliveries of natural gas on the Effective Date.

2. Buyer agrees to give Seller notice at all times, as far in advance as operating conditions will permit, of the estimated daily, monthly and annual quantities of natural gas required hereunder and the anticipated peak hourly demands. Buyer shall use its best judgment and experience in arriving at such estimates, but shall not be bound by the quantities thereof.

3. Buyer agrees that it will, subject to temporary or permanent outage resulting from either unavoidable deterioration or casualty, maintain in operation the storage holders which it now has, and will operate the same each day so as to assist in leveling the peak demands for natural gas to be delivered by Seller hereunder, subject, however, to the right of Buyer to keep at all times in its holders a reserve of gas of sufficient quantity to insure safe and adequate service to its customers as determined by Buyer; and Buyer will as nearly as practicable, with such storage capacity, take natural gas in equal and uniform hourly volumes. Subject to the aforesaid use by Buyer of holder capacity, Seller agrees to deliver to Buyer natural gas in accordance with the hourly and daily demands of the markets of Buyer up to but not to exceed a maximum daily demand of 90,000,000 cubic feet, or its equivalent nine hundred and twelve thousand six hundred therms.

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4. Inasmuch as interruptions in the delivery of gas hereunder may from time to time occur due to force majeure, as herein defined, or otherwise, and Buyer serving the large population and industries within the metropolitan area of Detroit, being in duty bound to maintain

its present water gas generating plants in good operating condition to effect continuity of service during such periods of interrupted service on the part of Seller, and because, in order to furnish gas of substantially the heat equivalent of natural gas it will be necessary for Buyer to make large expenditures on such generating equipment, Seller recognizes and agrees that notwithstanding the covenant that Buyer will purchase from Seller all its natural gas requirements, Buyer may use its present generating plants from time to time to manufacture gas substantially equivalent in heat units to natural gas, to assist in leveling those peak demands which would otherwise increase the cost of gas under this Agreement, provided, however, that Buyer shall pay for the minimum requirements specified in Section 4 of Article II; provided, further, that nothing in this Section contained shall limit Seller's obligation to furnish Buyer's requirements for gas as elsewhere herein provided.

Article XII

Place and Point of Delivery

The Place of Delivery for all gas to be delivered by Seller to Buyer hereunder shall be at Buyer's River Rouge plant, Greenfield and Allen Roads, in Melvindale, Michigan, except in the case of such Special Industrial Customers as shall be served directly from some other point on Seller's

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pipe line, as may be agreed on by the parties. The Point of Delivery shall be the outlet side of Seller's meters at the Place of Delivery and before passing through Buyer's regulators.

Article XIII

Possession of Gas

1. As between the parties hereto, Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer at the Point of Delivery, after which Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property and/or equipment of the indemnifying party, the Point of Delivery of the gas as hereinbefore specified to be the point of division of responsibility between the parties.

Article XIV

Pressure

Seller agrees to furnish gas hereunder at such pressures as Buyer may require, up to but not exceeding 100 pounds to the square inch gauge pressure, at the Point of Delivery. Buyer agrees to install, operate and maintain at the Point of Delivery such regulating devices as may be necessary to regulate the pressure of the gas delivered hereunder. Seller agrees to use due care and diligence to furnish gas to Buyer at a uniform pressure.

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Article XV

Force Majeure

1. Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

2. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to

remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder; nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

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Article XVI

Warranty of Title to Gas

Seller agrees that it will and hereby does warrant generally the title to all gas delivered under this Agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims and that it will indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, which are applicable before the title to the gas passes to Buyer or which may be levied and assessed upon the sale thereof to Buyer. In the event any adverse claim of any character whatsoever is asserted in respect of any of said gas, Buyer may retain the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined, as security for the performance of Seller's obligations with respect to such claim under this Section, or until Seller shall have furnished bond to Buyer, in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer with respect to such claim.

Article XVII

Patents

In case Buyer should wish to use gas purchased hereunder for reforming, Seller will undertake to secure for Buyer, without cost to Buyer, the right to use in the area now served by Buyer, necessary processes covered by patents which Seller can control.

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Article XVIII

Remedies

1. In the event that:

(a) Seller should be unable to, or fail, for a period longer than ninety (90) days to deliver gas of a standard and British thermal unit content as provided in this Agreement or which would meet the approval of any governmental agency having jurisdiction over Buyer, Buyer may by written notice to Seller cancel and terminate this Agreement in five days, on condition that at least sixty (60) days before said notice be given, Buyer shall have notified Seller that the gas delivered, or sought to be delivered; is below standard or unacceptable to the regulatory body and that said condition has then pertained for a period of thirty (30) days.

In the event that:

(b) Seller should, for a period of five (5) consecutive days, fail to deliver to Buyer any material portion of the gas which under this Agreement it is bound to deliver, or

(c) there should be a deficiency in deliveries, caused by the failure or inability of Seller to deliver the quantity of gas which Buyer desires and is entitled to demand under this Agreement on any day of each seven (7) day period over a period of six (6) consecutive seven (7) day periods, commencing with the day on which deficiency first occurred,

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Buyer may, within two (2) weeks of the last day of any such periods provided in (b) and (c), by written notice cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, on condition that Buyer shall have notified Seller in writing of each such daily deficiency or deficiencies within forty-eight (48) hours after the same shall have occurred.

If by reason of any of the causes enumerated in Section 1, Article XV, either party is effectively prevented or prohibited from further carrying out this Agreement, or if by reason of any order of court or governmental agency re-

sisted by all reasonable legal means, Buyer is prevented from selling and distributing gas within the City of Detroit, then either party may by five (5) days written notice to the other party, cancel and terminate this Agreement, without liability of any kind from one to the other, excepting for such transactions and dealings as were had and completed prior to the effective date of such cancellation.

In the event that Buyer shall fail to pay any bill rendered it by Seller for gas delivered under this Agreement within sixty (60) days after the same became due, Seller may, in addition to all other remedies which it may have at law in addition to those provided herein, at any time thereafter by written notice to Buyer, cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, provided that this remedy shall not be available or effective in case of default in the payment of disputed bills as elsewhere provided herein.

2. Any cancellation of this Agreement pursuant to the provisions of this Article XVIII shall be without prejudice to the right of Seller to collect any amounts then due it

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for gas delivered prior to the effective date of the cancellation, subject to any proper counterclaims or set-offs of Buyer, and without waiver of any remedy to which the party not in default may be entitled for violation of this Agreement.

3. The remedies herein specifically provided for are cumulative, and in addition to all rights and remedies for specific performance or for damages, including loss of return and profits, or otherwise, which either party may have at law or in equity for breach by the other party of any agreement, condition or covenant contained herein, which rights and remedies neither Buyer nor Seller shall in anywise be deemed to have waived either by the expressed provisions for the foregoing remedies or by the exercise of any thereof; provided, however, that in the event that this Agreement be cancelled or terminated by reason of any of the causes enumerated in Section 1 of Article XV hereof, or by reason of any order of court or governmental agency prohibiting the Buyer from distributing natural gas within the City of Detroit which has been

resisted by all reasonable legal means, there shall be no liability upon the part of either party to the other, excepting such liability as remains unsettled between the parties arising from the sale of gas and such transactions as were had and completed between the parties prior to cancellation.

4. If Seller shall at any time fail to deliver gas in volumes and/or at such pressures as Buyer may require up to the limits otherwise herein provided, Seller shall, unless relieved by the terms of Article XV hereof, reimburse and indemnify Buyer for any expenses, loss or damage which it may sustain by reason of such failure, including

[fol. 315]

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the expense of putting into operation any gas manufacturing equipment, and/or obtaining manufactured gas or natural gas to remedy such deficiency.

Article XIX

Miscellaneous

1. There shall be no modification of the terms and provisions hereof except by the formal execution of supplementary written contracts.

2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. Seller may assign its rights and obligations hereunder to a corporation to be formed for the purpose of carrying out this Agreement. Either Seller or Buyer may assign the rights and obligations of this Agreement to a corporation which shall receive the assets of such assignor and obligate itself to carry out the provisions hereof binding on such assignor, in which event the assignor shall be released hereunder, but otherwise neither party shall assign this Agreement or any of its rights hereunder unless it shall first have obtained the consent thereto of the other party.

4. Any notice, request, demand, statement or bill provided for in this Agreement shall be in writing and shall

be duly delivered when mailed by registered mail to the Post Office address of either of the parties hereto, as the case may be, as follows:

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Seller: Panhandle Eastern Pipe Line Company, 101 West 11th Street, Kansas City, Mo.

Buyer: Detroit City Gas Company, 415 Clifford Street, Detroit, Michigan.

or at such other address as either party shall designate for the purpose.

5. This Agreement shall be binding on any company which shall succeed by purchase, merger or consolidation to the properties of the Seller or Buyer, as the case may be.

6. Buyer will adopt and use schedules and forms of rates which will in its judgment tend to stimulate sales of natural gas for domestic, industrial and commercial purposes and for house heating. Buyer will make every reasonable effort to increase and build up the sales of natural gas throughout its gas distribution system and Seller will cooperate with Buyer in accomplishing this result. Buyer agrees to make such reasonable extensions to its distribution system as would be susceptible of earning a reasonable return on the investment.

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In Witness Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by B. R. Bay, President. (Corporate Seal.) Attest: N. F. Paxton, Assistant Secretary.

Detroit City Gas Company, by Wm. G. Woolfolk, President. (Corporate Seal.) Attest: Chas. S. Ritter, Secretary.

Approved as to form: James O. Murfin, Park Chamberlain.

[fol. 318]

EXHIBIT "G" TO REPORT

Tuesday, March 17, 1936.

Panhandle Eastern Pipe Line Company, 61 Broadway, New York.

DEAR SIRs:

As Trustee under the Decree of January 29, 1936, in Equity No. 1099 in the United States District Court of Delaware, I hereby notify you that I have approved the contract between you and Michigan Gas Transmission Corporation dated March 17, 1936.

I am satisfied that this contract is in the interest of Panhandle Eastern Pipe Line Company and in compliance with the Decree.

It is to be understood that the contract is to be performed in accordance with the Decree and that all the acts and operations of the parties under the contract are subject to the restrictions and conditions of the Decree.

I have examined the construction program planned for the Panhandle Eastern Pipe Line Company, and am satisfied that it does not require the Company to provide more gas production or transportation facilities than are sufficient in practice to meet the actual gas requirements of the Detroit City Gas Company as they shall develop under the Detroit contract, and that the flexibility in the construction program necessary to accommodate it to the growth or otherwise in the Detroit demand as the future may from time to time determine, is wholly within the judgment and control of the Board of Directors of the Panhandle Eastern Pipe Line Company.

Respectfully yours, Gano Dunn, Trustee.

[fol. 319]

EXHIBIT "K" TO REPORT

Agreement, dated as of the 1st day of June, 1936, between Columbia Oil & Gasoline Corporation, a Delaware corporation (hereinafter called Columbia Oil), party of the first part; Columbia Gas & Electric Corporation, a Delaware corporation (hereinafter called Columbia Gas), party of the second part; and Henry T. Bush and C. Ray Phillips,

Receivers (hereinafter called the Receivers) of Missouri-Kansas Pipe Line Company, a Delaware corporation (hereinafter called Mo-Kan), appointed by the Court of Chancery of the State of Delaware, parties of the third part.

Columbia Oil and Columbia Gas severally represent as follows:

(a) Panhandle Eastern Pipe Line Company (hereinafter referred to as Eastern), a Delaware corporation, has now outstanding the following capitalization of Bonds, Notes, Preferred Stock and Common Stock, which are owned by [fol. 320] Columbia Oil; Panhandle Corporation (a Maryland corporation, hereinafter referred to as Panhandle), and the public, respectively, as follows:

	OWNED BY		
	Columbia Oil	Panhandle	Public
Mortgage 6% Bonds.....	\$14,574,500	\$ —	\$3,315,500
Notes due September 1, 1937*	800,000	800,000	—
Preferred Stock (par value)...	4,700,000	4,700,000	—
Common Stock (No par val.)	404,326 shs.	324,326 shs.**	—

(*) These Notes bear no interest until September 1, 1936, and 5% interest for one year thereafter, payable at maturity, and are convertible at the option of the holders, par for par, into Preferred Stock.

(**) Panhandle Corporation also holds rights to subscribe for 80,000 shares of Common Stock at \$25 per share.

The parties have knowledge of the terms of the Bonds and the Mortgage securing the same, of the Notes and of the Preferred and Common Stock and of the provisions of the charter of Eastern affecting the same.

(b) Of said 404,326 shares of Common Stock of Eastern owned by Columbia Oil, 80,000 thereof were acquired by it on April 1, 1936, by the exercise of rights to subscribe to said Common Stock at the price of \$25 per share offered by Eastern to its stockholders. The time for the exercise of the rights to subscribe to an equal number of shares on similar terms offered by Eastern to Panhandle, has been extended by Eastern for a period sufficient to enable this Agreement to be carried out and the rights to be distributed as hereinafter provided.

(c) Panhandle has a capitalization consisting of \$4,901,000 principal amount of Two-Year 6% Collateral Trust [fol. 321] Notes (which are now in default), a current debt of \$232,641.65 and 1,000 shares of Common Stock. All of

said Notes and current debt and 750 shares of said Stock are owned by Columbia Oil. All of said Notes are guaranteed, as to principal and interest, by Mo-Kan, and are secured by pledge of the \$800,000 principal amount of Notes, the 47,000 shares of Preferred Stock and the 324,326 shares of Common Stock of Eastern and the rights to subscribe for 80,000 additional shares of such Common Stock, above referred to, which are owned by Panhandle.

(d) Eastern has entered into a contract, dated the 31st day of August, 1935, of which contract and the terms thereof the parties hereto have knowledge, with Detroit City Gas Company, whereby Eastern has contracted to supply the natural gas requirements of Detroit City Gas Company, up to the maximum amount therein specified, for a period of fifteen years, as more fully set forth in said contract (hereinafter called the Detroit Contract).

(e) Eastern, Columbia Gas and Columbia Oil have entered into a contract, dated January 31, 1936, of which contract and the terms thereof the parties hereto have knowledge, providing for the financing of the construction of a pipe line connecting the eastern terminus of Eastern's existing pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line, with the place of delivery specified in the Detroit Contract, as well as the reinforcement of the present pipe line of Eastern.

(f) Columbia Gas and Columbia Oil have entered into a contract, dated January 31, 1936, as supplemented by a letter from Columbia Gas to Columbia Oil, dated April 22, 1936, [fol. 322] of which contract and letter and the terms thereof the parties hereto have knowledge, providing for the advancing by Columbia Gas to Columbia Oil of all sums needed by Columbia Oil to enable it to carry out its obligations under this Agreement.

(g) Eastern has entered into a contract dated March 17, 1936, of which contract and the terms thereof the parties hereto have knowledge, with Michigan Gas Transmission Corporation (hereinafter referred to as Michigan), a Delaware corporation, all of the stock of which is owned by Columbia Gas, providing for the delivery by Eastern to Michigan, and the delivery by it to Detroit City Gas Company, of the amount of gas necessary to fulfill the actual requirements of the Detroit Contract.

The Chancellor of the State of Delaware has made an order, dated the 29th day of April, 1936, in the Delaware receivership proceedings of Mo-Kan, of which order and the terms thereof the parties hereto have knowledge, authorizing the Receivers to take the action called for on their part in this Agreement. The United States District Court for the Northern District of Illinois, Eastern Division, has made an order, dated the 14th day of May, 1936, in the Illinois Federal receivership proceedings of Mo-Kan, of which order and the terms thereof the parties hereto have knowledge, authorizing the receiver therein to join with the Receivers in executing the release hereinafter referred to in Subdivision (c) of Article III of this Agreement.

The purpose and intent of this Agreement is to express in one document, for the sake of convenience, and not to change or modify, the offer of Columbia Oil and Columbia [fol. 323] Gas to the Receivers, dated January 31, 1936, as extended pursuant to the letter from Columbia Oil and Columbia Gas to Frank P. Parish and Dupuy G. Warrick, dated March 5, 1936, and as modified according to the suggestions of the letter of the Receivers to Columbia Oil and Columbia Gas dated April 22, 1936, which modifications were under the same date accepted by Columbia Oil and Columbia Gas, and which offer, as so extended and modified, was approved by the Court of Chancery of the State of Delaware by said order dated April 29, 1936.

Now, therefore, in consideration of the mutual covenants and agreements herein set forth, the parties hereto, severally and not jointly, hereby agree as follows:

I. Columbia Oil agrees with the parties hereto as follows:

(a) That it will pay to the Receivers \$300,000 in cash, to be applied toward the expenses of the Receivership of Mo-Kan and liquidating other obligations of Mo-Kan.

(b) That, as holder of all of the outstanding indebtedness and 750 shares of the Stock of Panhandle, it will cause Panhandle to accept the surrender by the Receivers to Panhandle of the 250 shares of the Stock of Panhandle now owned by the Receivers pursuant to the provisions of Subdivision (a) of Article III of this Agreement and will cause Panhandle to assign and deliver to the Receivers properly endorsed and stamped for transfer the 324,326 shares of

Common Stock of Eastern and the rights to subscribe to 80,000 shares of Common Stock of Eastern preferred to in the following Subdivision (c), now owned by Panhandle, [fol. 324] and will hold the Receivers and Mo-Kan harmless from all claims of creditors of Panhandle in respect of the assets so assigned and delivered.

(c) That it will, with the cooperation of the Receivers, cause Eastern to fix the period within which the aforesaid subscription rights now held by Panhandle may be exercised, to and including the 90th day following the termination of the Receivership, but in no case beyond January 1, 1937; provided, however, that, if, prior to the exercise of said subscription rights it shall appear, either from an opinion of Eastern's counsel or from action by the Securities and Exchange Commission, that registration of said subscription rights or of the Common Stock of Eastern called for thereby under the Securities Act of 1933, as amended, is necessary, then and in that event the Receivers will cooperate with Columbia Oil in causing Eastern to file a registration statement under said Act, at Eastern's expense, in respect of said rights or Common Stock, as the case may be, and to extend the period during which such subscription rights may be exercised to and including the 90th day following the effective date of said registration statement. That it will, with the cooperation of the Receivers, cause Eastern to deliver to the Receivers, when requested by them, on such reasonable notice as shall suffice for preparation and printing, in order that they may distribute the same to the stockholders of Mo-Kan, as hereinafter provided, transferable subscription warrants evidencing the subscription rights referred to in the foregoing Subdivision (b) of this Article I. That it will purchase any shares not so subscribed for by said stockholders at the price of \$25 per share.

[fol. 325] (d) That it will, with the cooperation of the Receivers, cause Eastern and its subsidiary, Central Distributing Company, to release and withdraw all their claims aggregating \$42,606.74 filed in the Mo-Kan receivership.

(e) That it will cancel or cause the cancellation of the guaranty by Mo-Kan of the principal of, and interest on, the Two-Year 6% Collateral Trust Notes of Panhandle now outstanding and will release Mo-Kan of all liability with respect to said guaranty and cause the withdrawal of the

claim filed by Chemical Bank & Trust Company, as Trustee, upon the Two-Year 6% Collateral Trust Notes of Panhandle in the principal amount of \$4,940,000 in the Mo-Kan receivership proceeding.

(f) That it will, with the cooperation of the Receivers, cause Eastern to amend its Mortgage Trust Indenture dated as of October 1, 1930 (as heretofore amended) so as to increase the Sinking Fund for the Bonds of Series A thereunder to an amount calculated, on a cumulative basis, to retire the principal amount of all of the Bonds of Series A by October 1, 1951.

(g) That it will, with the cooperation of the Receivers cause Eastern to amend its Certificate of Incorporation so as to authorize, in lieu of the 110,000 shares of Convertible Cumulative Preferred Stock now authorized, two classes of Preferred Stock, to be designated as Class A Preferred Stock and Class B Preferred Stock and to have powers, preferences and rights, and qualifications, limitations and restrictions, respectively, as set forth in the form of Certificate of Amendment of Certificate of Incorporation attached hereto as Exhibit A.

[fol. 326] (h) That it will convert, or cause to be converted, the \$1,600,000 principal amount of Promissory Notes due September 1, 1937, of Eastern into 16,000 shares of Preferred Stock of Eastern and will surrender, or cause to be surrendered, all of the Preferred Stock of Eastern in exchange for the two new classes of Preferred Stock referred to in the foregoing Subdivision (g) of this Article I.

(i) That it will purchase from the Receivers at \$25 per share up to 40,000 shares of Common Stock of Eastern which the Receivers will obtain pursuant to the foregoing Subdivision (b) of this Article I; provided, however, that (1) at least such number of shares be first offered to the stockholders of Mo-Kan for purchase by them at \$25 per share, in addition to, at the same time, in the same manner and subject to the same conditions respecting the filing of a registration statement, as the shares covered by the subscription rights referred to in the foregoing Subdivision (c) of this Article I; (2) the obligation of Columbia Oil shall be to purchase only such portion of the shares so offered as shall not be purchased by said stockholders pursuant to such offering; (3) the money so provided by Columbia Oil

shall be used only for the purpose of paying claims adjudicated in the receivership proceedings and administration fees and expenses allowed by the Chancellor; and (4) to the extent there shall not be needed for said purpose the full \$1,000,000 which would be so provided by Columbia Oil if it purchased 40,000 shares of Common Stock of Eastern at \$25 per share, Columbia Oil shall not be called upon to make such purchase.

[fol. 327] (j) That, if it is called upon at any time within six months after the termination of the receivership but not later than December 31, 1937, so to do, it will sell, to Mo-Kan, or to any new company taking over the assets of Mo-Kan under a plan of reorganization, readjustment or reclassification, such shares of Common Stock of Eastern as Columbia Oil shall have acquired pursuant to the provisions of the foregoing Subdivisions (c) and (i) of this Article I, at the price of \$25 per share plus interest at the rate of 6% per annum from the date of purchase by Columbia Oil to the date of such sale.

(k) That in the event Eastern elects to redeem at any time part of its Class A Preferred Stock out of earnings, Columbia Oil will waive the premium of \$10 per share payable on the redemption of such shares of Class A Preferred Stock as may at the time be owned, held or controlled by it and be then called for redemption.

(l) That it will, with the cooperation of the Receivers, and subject to the approval of the Trustee appointed by the United States District Court for the District of Delaware in the decree entered January 29, 1936 in the cause entitled "United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al., Defendants," said cause being No. 1099, in equity, cause the Board of Directors of Eastern to consist in part of three representatives of the Receivers until the next annual meeting of the stockholders. If the two Receivers continue as members of the Board they shall be considered as two of such representatives.

[fol. 328] (m) That it will, with the cooperation of the Receivers, cause Eastern to execute and deliver to the Receivers and to Mo-Kan a good and sufficient release, releasing all claims it may have against them or any of them, in the form attached hereto as Exhibit B.

II. Columbia Gas agrees with the parties hereto that, in the event Eastern elects to redeem at any time part of its Class A Preferred Stock out of earnings, Columbia Gas will waive the premium of \$10 per share payable on the redemption of such shares of Class A Preferred Stock, if any, as may at the time be owned, held or controlled by it and be then called for redemption.

III. The Receivers agree with the parties hereto as follows:

(a) That they will surrender to Panhandle the 250 shares of the Stock of Panhandle which they now hold, in consideration of the assignment and delivery by Panhandle to them of the 324,326 shares of Common Stock of Eastern and the rights to subscribe to 80,000 shares of Common Stock of Eastern referred to in Subdivision (b) of Article I of this Agreement, properly endorsed for transfer, and will deliver to Columbia Oil the resignations of Mr. Henry T. Bush and Mr. Arthur G. Logan as directors of Panhandle.

(b) That they will enter or cause their attorneys to enter into a stipulation reciting that the action brought by the Receivers in the United States District Court for the Southern District of New York, entitled "Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, Plaintiffs, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al., Defendant[s], [fol. 329] ants," said cause being No. 61-347, has been settled and consenting to the dismissal of said action without costs to any party against the others upon application of any party made without notice, and, in their capacity as Receivers and on behalf of Mo-Kan, will execute and deliver to each of the several defendants in said action good and sufficient releases, in the form of Exhibit C attached hereto, releasing all claims arising out of or in any way appertaining to the subject matter of said action.

(c) That, in their capacity as Receivers and on behalf of Mo-Kan, they will execute and deliver to Columbia Oil, Columbia Gas, Eastern and the corporations or individuals or classes thereof referred to therein, a good and sufficient release, in the form of Exhibit D attached hereto, and will execute and deliver to Burt R. Bay Covenants Not to Sue in the forms attached hereto as Exhibits D-1 and D-2. The Receivers and Columbia Oil, as the holders between them

of the entire capital stock of Eastern, agree that they will cause Eastern to execute and deliver to Columbia Oil, Columbia Gas and the corporations or individuals or classes thereof referred to therein, concurrently with the documents to be delivered as aforesaid, a general release in the form attached hereto as Exhibit E.

(d) That they will procure the ancillary receiver appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division, in the cause entitled "John C. Williamson v. Missouri-Kansas Pipe Line Co., a corporation, et al.," in Equity, said cause being No. 10274, to join with them in the release and Covenants Not to Sue mentioned in the foregoing Subdivision (c) of [fol. 330] this Article III, as authorized by the order of said Court entered on May 14, 1936.

(e) That, when Mo-Kan as a stockholder of Eastern, or the Receivers in its behalf, receive the warrants evidencing rights to subscribe to the 80,000 shares of Common Stock of Eastern, referred to in Subdivision (c) of Article I of this Agreement, Mo-Kan will distribute, or the Receivers will distribute on behalf of Mo-Kan, to such persons as shall present for appropriate notation thereon certificates for Capital Stock of Mo-Kan (which certificates shall either be registered in the names of the persons so presenting them or be duly endorsed and stamped for transfer to such persons) such warrants pro rata except that each Class B share shall be entitled to one-twentieth of the right accorded each share of the Common Stock. That such rights shall not be exercisable by the Receivers or by Mo-Kan but only by the stockholders of Mo-Kan to whom they shall have been distributed or their assignees as above provided, and that all warrants so received by Mo-Kan or the Receivers which shall not have been so distributed shall be allowed to lapse.

(f) That they will not call upon Columbia Oil to purchase any shares of Common Stock of Eastern pursuant to the provisions of Subdivision (i) of Article I of this Agreement except to the extent that the funds so to be provided by Columbia Oil shall be needed for the purpose of paying claims adjudicated in the receivership proceedings and administration fees and expenses allowed by the Chancellor, and that they will not apply any funds so provided by Columbia Oil for any other purposes.

[fol. 331] (g) That they will cooperate with Columbia Oil in causing Eastern and Panhandle to take the action set forth in this Agreement to be taken by Eastern and by Panhandle, respectively.

IV. All of the parties hereto severally agree with each other as follows:

(a) That they will enter into an agreement with Eastern, in the form attached hereto as Exhibit F, for the purpose, among others, of cancelling the certain Agreement, dated September 17, 1930, between Mo-Kan, The National City Company and Columbia Oil (including all modifications of said Agreement) and of any rights and obligations of the parties hereto, Eastern and Mo-Kan which may exist thereunder.

(b) That the action called for by this Agreement shall be taken by the several parties concurrently on or before June 5, 1936, the performance by each party being a condition to the performance by any other party, except as to those actions which this Agreement indicates are to be taken from time to time in the future or at a date subsequent to the delivery of the Common Stock of Eastern and the releases.

In witness whereof, the corporate parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, and the Receivers have hereunto set their hands and seals, all as of the day and year first above written.

Columbia Oil & Gasoline Corporation, By Charles A. Munroe, President. (Corporate Seal.) Attest: Conrad H. Lavin, Assistant Secretary.

Columbia Gas & Electric Corporation, By E. Reynolds, Jr., President. (Corporate Seal.) Attest: H. H. Pell, Jr., Secretary.

C. Ray Phillips (L. S.). Henry T. Bush (L. S.).
Receivers of Missouri-Kansas Pipe Line Company.

[fol. 333]

EXHIBIT "A"

General Release

Know All Men by These Presents, that for and in consideration of the sum of One hundred dollars (\$100), lawful money of the United States of America, and other good and valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, Panhandle Eastern Pipe Line Company, a Delaware corporation, for itself, its subsidiaries, successors and assigns, has remised, released and forever discharged and by these presents does remise, release and forever discharge Columbia Gas & Electric Corporation, a Delaware corporation, Columbia Oil & Gasoline Corporation, a Delaware corporation, and each of them and their respective successors and assigns, and their respective subsidiary corporations, and each of them, and the respective successors and assigns of said subsidiary corporations, and also each and every of such persons as are or have been the officers or directors, present or past, of said Columbia Gas & Electric Corporation, [fol. 334] said Columbia Oil & Gasoline Corporation and of their respective subsidiary corporations, and their respective heirs, administrators, executors and assigns, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof, which against them or any of them said Panhandle Eastern Pipe Line Company or its subsidiaries ever had, now has or which it, its subsidiaries, successors or assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, except such rights, if any, as said Panhandle Eastern Pipe Line Company may have under (a) the Agreement between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, dated January 31, 1936, (b) the Agreement between Panhandle Eastern Pipe Line Company and Michigan Gas

Transmission Corporation, dated March 17, 1936, and (c) the Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, dated as of June 1, 1936, and except such rights, if any, as Panhandle Eastern Pipe Line Company may have against said Michigan Gas Transmission Corporation arising out of current dealings between said Panhandle Eastern Pipe Line Company and said Michigan Gas Transmission Corporation.

[fol. 335] In witness whereof, Panhandle Eastern Pipe Line Company has caused this instrument to be executed by its President or a Vice-President thereunto duly authorized, and its corporate seal to be hereto affixed and attested by its Secretary, this 3rd day of June, 1936, at New York, N. Y.

Panhandle Eastern Pipe Line Company, by ———, Vice-President.

Attest: ———, Secretary.

STATE OF NEW YORK,

County of New York, ss:

On the 3rd day of June, in the year 1936, before me personally came James L. Harrop, to me known, who, being by me duly sworn, did depose and say that he resided in Maplewood, New Jersey; that he is a Vice-President of Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[fol. 336]

EXHIBIT "B"

General Release to Receivers

Know All Men by These Presents, that for and in consideration of the sum of One hundred dollars (\$100) lawful money of the United States of America, and other good and

valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, Panhandle Eastern Pipe Line Company, a Delaware corporation, for itself, its subsidiaries, successors and assigns, has remised, released and forever discharged and by these presents does remise, release and forever discharge Missouri-Kansas Pipe Line Company, a Delaware corporation, and its subsidiaries, successors and assigns, and Henry T. Bush and C. Ray Phillips as Receivers for Missouri-Kansas Pipe Line Company, appointed by the Chancellor of the State of Delaware, on March 18, 1932, and Thurlow G. Essington, as Receiver for Missouri-Kansas Pipe Line Company appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division, on May 12, 1932, and their respective heirs, administrators, executors, successors and assigns, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreement, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof, which against them or any of them said Panhandle Eastern Pipe Line Company or its subsidiaries ever had, now has, or which it, its subsidiaries, successors or assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of [fol. 337] these presents, except such rights, if any, as Panhandle Eastern Pipe Line Company may have under the Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, dated as of June 1, 1936.

In Witness Whereof, Panhandle Eastern Pipe Line Company has caused this instrument to be executed by its President or a Vice-President thereunto duly authorized, and its corporate seal to be hereto affixed and attested by its Secretary, this 3rd day of June, 1936, at New York, N. Y.

Panhandle Eastern Pipe Line Company, by — — —,
Vice-President.

Attest: — — —; Secretary.

[fol. 338] STATE OF NEW YORK,
County of New York, ss:

On the 3rd day of June, in the year 1936, before me personally came James L. Harrop, to me known, who, being by me duly sworn, did depose and say that he resided in Maplewood, New Jersey; that he is a Vice-President of Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[fol. 339]

EXHIBIT C

Release of Suit

Know All Men by These Presents, that for and in consideration of the sum of One Hundred dollars (\$100), lawful money of the United States of America, and other good and valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, we, Henry T. Bush and C. Ray Phillips, as Receivers for Missouri-Kansas Pipe Line Company, a Delaware corporation, appointed by the Chancellor of the State of Delaware, on March 18, 1932, for ourselves, our heirs, executors, administrators, successors and assigns and for Missouri-Kansas Pipe Line Company, its successors and assigns, have remised, released and forever discharged and by these presents do remise, release and forever discharge Columbia Gas & Electric Corporation, a Delaware corporation, Columbia Oil & Gasoline Corporation, a Delaware corporation, and each of them and their respective successors and assigns, and also Philip G. Gossler, Charles A. Munroe, George H. Howard, Thomas B. Gregory, Thomas R. Weymouth, Edward Reynolds, Jr., Burt R. Bay, John H. Hillman, Jr., and each of them, and their respective heirs, executors, administrators and assigns, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses,

damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof which against them or any of them we or Missouri-Kansas Pipe Line Company ever had, now have, or which we, our heirs, [fol. 340] executors, administrators, successors or assigns, or Missouri-Kansas Pipe Line Company, its successors and assigns hereafter can, shall or may have have arising out of or in any way appertaining to the subject matter of a certain suit or action heretofore instituted in the United States District Court for the Southern District of New York entitled "Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, Plaintiffs, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Phillip G. Gossler, Charles A. Munroe, George H. Howard, Thomas B. Gregory, Thomas R. Weymouth, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr., Defendants," said cause being No. 61-347.

This instrument, or the execution or delivery thereof, shall not operate to discharge or release or otherwise effect any rights or causes of action which we, or Missouri-Kansas Pipe Line Company, may have against any person, firm or corporation, other than the parties hereinabove named or described in favor of whom this release is executed, and all such rights or causes of action against all persons, firms or corporations, other than those above named or described and in favor of whom this release is executed, are hereby expressly reserved to us and to Missouri-Kansas Pipe Line Company. Nothing herein contained, however, shall be deemed to limit the scope, or effectiveness of a certain general release, dated June 3, 1936, executed by us to Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Panhandle Eastern Pipe Line Company and certain individuals and corporations or classes thereof referred to therein.

[fols. 341-342] In Witness Whereof, we have hereunto set our hands and seals this 4th day of June, 1936, at Wilmington, Delaware.

— (Seal.)

— (Seal.)

As Receivers of Missouri-Kansas Pipe Line Company appointed by the Chancellor of the State of Delaware.

STATE OF DELAWARE,
County of New Castle, ss:

On this 4th day of June, 1936, before me personally came Henry T. Bush and C. Ray Phillips, to me known and known to me to be the Receivers for Missouri-Kansas Pipe Line Company, a Delaware corporation, appointed by the Chancellor of the State of Delaware on March 18, 1932, and the individuals described in and who executed the foregoing instrument, and they duly acknowledged to me that they executed the same as such Receivers.

[fol. 343]

EXHIBIT "F"

General Release to Panhandle Eastern Pipe Line Company

Know All Men by These Presents, that for and in consideration of the sum of One Hundred dollars (\$100), lawful money of the United States of America, and other good and valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, we, Columbia Gas & Electric Corporation, a Delaware corporation, and Columbia Oil & Gasoline Corporation, a Delaware Corporation, for ourselves, our subsidiaries, successors and assigns, have remised, released and forever discharged and by these presents do remise, release and forever discharge Panhandle Eastern Pipe Line Company, a Delaware corporation, and its successors and assigns, and its subsidiary corporations, and each of them, and the respective successors and assigns of said subsidiary corporations, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof, which against them or any of them, we, or any of us, ever had, now have, or which we, our subsidiaries, successors or assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, except such rights, if any, as we, or any of us, may have under the Agreement between Panhandle Eastern Pipe Line Company, Columbia Gas &

Electric Corporation and Columbia Oil & Gasoline Corporation, dated January 31, 1936, and under the Agreement [fol. 344] between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936, and under the Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company, dated as of June 1, 1936, and except such rights, if any, as said Michigan Gas Transmission Corporation may have against said Panhandle Eastern Pipe Line Company arising out of current dealings between said Michigan Gas Transmission Corporation and said Panhandle Eastern Pipe Line Company.

In Witness Whereof, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation have caused this instrument to be executed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, this 3rd day of June, 1936, at New York, N. Y.

Columbia Gas & Electric Corporation, by — — —,
President.

Attest: — — —, Secretary.

Columbia Oil & Gasoline Corporation, by — — —,
President.

Attest: — — —, Assistant Secretary.

[fol. 345-346] STATE OF NEW YORK,
County of New York, ss:

On the 3rd day of June, in the year 1936, before me personally came E. Reynolds, Jr., to me known, who, being by me duly sworn, did depose and say that he resided in Stamford, Connecticut; that he is the President of Columbia Gas & Electric Corporation, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like orders.

STATE OF NEW YORK,

County of New York, ss.:

On the 3rd day of June, in the year 1936, before me personally came Charles A. Munroe, to me known, who, being by me duly sworn, did depose and say that he resided in Chicago, Illinois; that he is the President of Columbia Oil & Gasoline Corporation, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like orders.

[fol. 347] EXCERPTS FROM EXHIBIT "L" TO REPORT

Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 11:30 o'clock A. M. on Tuesday, March 24, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, William P. Philips and O. Ray Phillips,

being a majority of the Directors and constituting a quorum.

The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

[fol. 348] Declaration of Stock Dividend

The Chairman stated that, as contemplated by the Certificate of Amendment of the Certificate of Incorporation of this Company filed February 6, 1936, it would be in order to increase the number of outstanding shares of stock of the Company to 648,652 shares, through the issue of 646,354 additional shares of Common Stock as a stock dividend.

After discussion, on motion duly made and seconded, it was unanimously

Resolved that a stock dividend of 646,354 shares of Common Stock be and hereby is declared upon the outstanding Common Stock of this Company, payable on March 25, 1936, out of the authorized and unissued Common Stock of this Company, to the holders of record of such outstanding Common Stock as of the close of business on March 24, 1936.

The Chairman then stated that Section 35 of the Delaware General Corporation Law requires that the Board of Directors, in connection with the declaration of a dividend payable in shares of stock without par value, fix the price [fol. 349] at which such shares shall be issued. Thereupon, on motion duly made and seconded, it was unanimously

Resolved that the shares of Common Stock without par value of this Company which shall be issued in payment of the stock dividend declared by the foregoing resolution shall be deemed to have been issued at the total price of \$15,017,300 payable out of the surplus of the Company, and that the officers of this Company be and hereby are directed to transfer on the books of this Company from surplus to capital account, when and as such stock shall be issued, the sum of \$15,017,300.

Issue of Subscription Rights

The Chairman recommended that, pursuant to Subdivision (d) of Section 1 of the Agreement dated January 31, 1936, between this Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, the Company offer to the holders of its Common Stock, without nominal or par value, 160,000 additional shares of Common Stock (being part of the now authorized but unissued Common Stock of the Company) for subscription by said holders in proportion to their several holdings of Common Stock, at the price of \$25.00 per share, payable April 1, 1936. After discussion, on motion duly made and seconded, it was unanimously

Resolved that this Company offer to the holders of its Common Stock of record at the close of business March 26, 1936, the privilege of subscribing after said date and up to the close of business on April 1, 1936, for 160,000 shares

of the Common Stock of this Company at the price of \$35.00 [fol. 350] per share, in amounts in proportion to their several holdings of Common Stock in this Company, the subscription price to be paid in full on or before April 1, 1936, such rights to be assignable only if the consent of this Company is obtained thereto;

Resolved that all shares of Common Stock so to be issued shall be issued as fully paid and non-assessable;

Resolved that all of the consideration so received by this Company for the issue of such additional shares of Common Stock shall be credited to Capital; and

Resolved that the officers of this Company be and hereby are authorized and directed to take any and all action necessary or proper to carry the purposes of the foregoing resolutions fully into effect.

The Chairman submitted a form of letter to the holders of the Common Stock of this Company, offering them the subscription rights hereinabove authorized. Said form of letter was as follows:

Panhandle Eastern Pipe Line Company.

(Two separate letters)

Mr. Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware, 80 Broad Street, New York, N. Y.

Ottiwell & Co., c/o Chemical Bank & Trust Company, 165 Broadway, New York, N. Y.

[fol. 351] DEAR SIR(S):

The Board of Directors of Panhandle Eastern Pipe Line Company, at its meeting held March 24, 1936, authorized the offering of 160,000 shares of Common Stock of the Company for subscription, at the price of \$25.00 per share, by the holders of the Common Stock of record at the close of business March 26, 1936, in amounts in proportion to their several holdings of Common Stock in the Company. These rights are only assignable if the consent of Panhandle Eastern Pipe Line Company is obtained thereto.

As holder of record of one-half of the outstanding Common Stock of this Company, you are hereby given the right

to subscribe, on or before the close of business on April 1, 1936, for 80,000 additional shares of Common Stock of this Company, at said price of \$25.00 per share.

Payment of your subscription should be made in New York funds, payable to the order of Panhandle Eastern Pipe Line Company, at Room 3026, 61 Broadway, New York, N. Y.

Yours very truly, Panhandle Eastern Pipe Line Company by — —, Vice-President.

On motion duly made and seconded, it was unanimously

Resolved that the form of letter to the holders of Common Stock of this Company, offering them the right to subscribe [fol. 352] for an aggregate of 160,000 shares of additional Common Stock of this Company, at the price of \$25.00 per share, which has been submitted to this meeting, be and hereby is approved, and that the President or any Vice-President of this Company be and hereby is authorized to execute and deliver to each of the holders of record of Common Stock of this Company a letter in substantially said form; and that the officers of this Company be and hereby are authorized to take from time to time any and all action necessary or proper to carry the purposes of said letter fully into effect.

The Chairman called attention to the fact that, pursuant to subdivision (a) of Section 3 of the Agreement dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, Columbia Oil & Gasoline Corporation was obligated to subscribe immediately for its pro rata share of the additional stock and, on April 2, 1936, either (a) purchase such of the shares of Common Stock so offered for subscription as shall not have been subscribed for by other stockholders, or (b) if the time for the payment of subscriptions shall have been extended to a date later than April 1, 1936, to advance to this Company the amount that would be payable if all of the subscriptions to such shares of Common Stock which may be exercised later than April 1, 1936, had been exercised, the portion of such advance represented by subscription rights later exercised to be repaid by this Company, with interest at the rate of 6% per annum, upon the exercise of such subscription rights. He stated that the effect of carrying out

these provisions would be to provide \$4,000,000 by April 2, 1936, which was more than this Company's immediate cash [fol. 353] requirements, and that it would be desirable to defer the receipt by this Company of the \$2,000,000 to be represented by subscriptions other than that made directly by Columbia Oil & Gasoline Corporation, in order to save this Company the 6% interest charge. He then submitted to the meeting a proposed form of agreement with Columbia Oil & Gasoline Corporation providing for the extension of the time within which subscriptions might be made by owners other than Columbia Oil & Gasoline Corporation and for the deferment of the advances to be made by Columbia Oil & Gasoline Corporation in anticipation of such subscriptions. Said proposed agreement was as follows:

Panhandle Eastern Pipe Line Company

Columbia Oil & Gasoline Corporation, 61 Broadway, New York, N. Y.

DEAR SIRs:

The Board of Directors of Panhandle Eastern Pipe Line Company, at its meeting held March 24, 1936, authorized the offering of 160,000 additional shares of common stock of the Company for subscription, at the price of \$25.00 per share, by the holders of the Common Stock of record at the close of business, March 26, 1936, in amounts in proportion to their several holdings of Common Stock in the Company.

As beneficial owner of the 324,326 shares of Common Stock of this Company, now held of record by Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree dated January 29, 1936, in Cause No. 1099; in Equity in the District Court of the United States for the District of Delaware, you are required, pursuant to Subdivision (a) of Section 3 of the [fol. 354] Agreement dated January 31, 1936 between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation, and Columbia Oil & Gasoline Corporation, to subscribe immediately for 80,000 shares, being your pro rata proportion of the additional shares now offered for subscription. Inasmuch as the \$2,000,000 which we shall receive through this subscription will be sufficient to meet our immediate cash requirements, we propose the following:

1. The undersigned will extend the time for the exercise of the subscription rights in respect of the 324,326 shares

of Common Stock standing in the name of Ottiwell & Co. from April 1, 1936 to January 1, 1937, subject to the right of the Board of Directors of this Company to reduce the period of such extension to such date as it may see fit on not less than fifteen days' written notice to the record holder of such stock, provided that, if your offer dated January 31, 1936 to the Receivers of Missouri-Kansas Pipe Line Company shall have been accepted or shall still be pending, such reduction of time shall not be in conflict with the terms of such offer.

2. On your request, the undersigned will issue to its stockholders who shall not have subscribed for the shares of Common Stock so offered to them, transferable subscription warrants, in form satisfactory to you and in such denominations as you may request.

3. In order that we may save all or a part of the 6% interest charge referred to in said Subdivision (a) of Section 3 of said Agreement dated January 31, 1936, and in order that we may receive the funds required for construction as needed, you will agree to advance to the undersigned the amount that would have been payable if all of the subscriptions [fol. 355] to additional shares of Common Stock of the undersigned had been exercised on April 1, 1936, from time to time and in such amounts as the officers of the undersigned may, on not less than ten days' notice in each case, request.

If this arrangement is satisfactory to you, kindly confirm your acceptance at the foot of the enclosed copy of this letter.

Very truly yours, Panhandle Eastern Pipe Line Company, by — — —, Vice-President.

Accepted: Columbia Oil & Gasoline Corporation, by — — —, President.

After discussion, on motion duly made and seconded, it was unanimously

Resolved that the form of agreement with Columbia Oil & Gasoline Corporation which has been submitted to this meeting be and hereby is approved and that the officers of this Company be and hereby are authorized and directed to execute, in the name and on behalf of this Company, and to deliver to Columbia Oil & Gasoline Corporation, an agree-

ment in substantially said form; and to take from time to time any and all action necessary or proper to carry the purposes of said agreement and of this resolution fully into effect.

[fol. 356] The Chairman then submitted a form of letter to Ottiwell & Co., the holder of one-half of this Company's outstanding Common Stock, providing for the extension of the time in which to exercise its subscription rights and providing for the issuance, when required, of transferable subscription warrants. Said form of letter was as follows:

Panhandle Eastern Pipe Line Company

Ottiwell & Co., % Chemical Bank & Trust Co., 165 Broadway, New York, N. Y.

DEAR SIRs:

There is enclosed herewith a notice of an offering of rights to subscribe for additional shares of Common Stock of Panhandle Eastern Pipe Line Company.

Although said notice calls for the payment of subscriptions on or before April 1, 1936, the Board of Directors of this Company has authorized an extension of the time within which your subscription may be made to January 1, 1937, subject to the right of the Board of Directors to reduce the period of such extension to such date as it may see fit, on not less than fifteen days' written notice to you.

Yours very truly, Panhandle Eastern Pipe Line Company, by — — —, Vice-President.

On motion duly made and seconded, it was unanimously

Resolved that the form of letter to Ottiwell & Co. which has been submitted to this meeting be and hereby is ap- [fol. 357] proved, and that the President or a Vice-President of this Company be and hereby is authorized and directed to execute and deliver a letter to Ottiwell & Co. in substantially said form; and that the officers of this Company be and hereby are authorized and directed to take from time to time any and all action necessary or proper to carry the purposes of said agreement and of this resolution fully into effect.

[fol. 358] Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 11:00 o'clock A. M., on Tuesday, April 7, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, Ashton W. Hawkins, William P. Philips and C. Ray Philips, being a majority of the Directors and constituting a quorum.

The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

[fol. 359] Subscription Rights: Columbia Oil and Gasoline Corporation, as beneficial owner of Common Stock of this Company, held by Gano Dunn, as Trustee for Columbia Oil & Gasoline Corporation, under the Decree of January 29, 1936, instructed the Trustee to exercise the subscription rights granted at a meeting of this Board held March 24, 1936, and this was done on April 1st by the purchase of 80,000 shares of Common Stock at the price of \$25.00 per share.

[fol. 360] Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 2:45 o'clock P. M. on Tuesday, May 5, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, Ashton W. Hawkins, F. Cliffe Johnston, Dean Mathey, William P. Philips and C. Ray Phillips, being all of the Directors and constituting a quorum.

[fol. 361] The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

[fol. 362] Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company

The Secretary reported that on April 29, 1936 the Chancellor in the Court of Chancery of the State of Delaware in and for New Castle County, Delaware had issued an order approving an Offer made by Columbia Oil & Gasoline Corporation to the Receivers of Missouri-Kansas Pipe Line Company, dated January 31, 1936, as supplemented March 5, 1936 and as modified April 22, 1936. A copy of said order was as follows:

Marvel, Morford, Ward & Logan,
Delaware Trust Building,
Wilmington, Delaware

April 29, 1936.

Columbia Gas and Electric Corporation, Columbia Oil and Gasoline Corporation, 61 Broadway, New York, New York.

GENTLEMEN:

In re: R. H. McWilliams Co. vs. Missouri-Kansas Pipe Line Company, et al. Consolidated and Constituent Causes

This is to advise you that Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, presented your offer dated January 31, 1936, as supplemented by your letter of March 5, 1936, and as modified by their letter to you of April 22, 1936, setting forth certain modifications which had been agreed to by you, to the Chancellor of the State of Delaware at the adjourned hearing on Thursday, April 23, 1936, in the above-captioned proceedings, and recommended that he enter an order directing them to accept the offer as so modified. This is to notify you that the Chancellor approved the offer as so modified and entered an order dated the 29th day of April, A. D. 1936, authorizing and directing said Receivers to accept the offer as so modified. Enclosed herewith is a copy of the order entered by the Chancellor.

The Receivers are now prepared and authorized to join with you in carrying the offer as so modified into effect, and, to the extent necessary, hereby accept the offer as so modified.

Yours truly, Henry T. Bush and C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Company, by Marvel, Morford, Ward & Logan, Their Attorneys.

AGL/MB. Enc.

[fol. 364] IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY

Consolidated Cause

R. H. McWILLIAMS, JR. CO., INC., Complainant,

vs.

MISSOURI-KANSAS PIPE LINE COMPANY; a Corporation, FRANK P. PARISH & Co., a Corporation, Kentucky Natural Gas Company, a Corporation, and Indiana Kentucky Natural Gas Corporation, a Corporation, Respondents

Receivership Cause

R. H. McWILLIAMS, JR. CO., INC., Complainant,

vs.

MISSOURI-KANSAS PIPE LINE COMPANY, a Corporation, FRANK P. PARISH & Co., a Corporation, Kentucky Natural Gas Company, a Corporation, and Indiana Kentucky Natural Gas Corporation, a Corporation, Respondents

[fol. 365] Constituent Causes

PEOPLES-PITTSBURGH TRUST COMPANY, as Trustee under the Collateral Trust Indenture, dated March 15, 1931, of Missouri-Kansas Pipe Line Company, Complainant,

vs.

MISSOURI-KANSAS PIPE LINE COMPANY, HENRY T. BUSH and C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Company, Defendants

And now, to-wit this 29th day of April, A. D. 1936, the above-captioned cause having come on to be heard pursuant

to the order entered herein on the 9th day of March, A. D. 1936, upon the petitions of Frank P. Parish and Dupuy G. Warrick and Colony Realty & Investment Company, et al., praying, inter alia, that Henry T. Bush and C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Company, be directed to accept a certain offer from Columbia Oil and Gasoline Corporation and Columbia Gas and Electric Corporation, set forth in a certain letter from said corporations to said Receivers, dated January 31, 1936, as supplemented by a letter from said corporations, dated the 5th day of March, A. D. 1936, copies of both whereof are annexed to said petition of Frank P. Parish and Dupuy G. Warrick;

And said hearing having been duly adjourned from the 15th day of April, A. D. 1936, to the 23rd day of April, [fol. 366] A. D. 1936, and having come on to be heard further upon said petitions above mentioned, and also upon the petition of Henry T. Bush and C. Ray Phillips, Receivers as aforesaid, filed in this cause on the 23rd day of April, A. D. 1936, praying that they be authorized to accept said offer above referred to, as theretofore supplemented and as modified by a letter from said Receivers to said corporations, dated the 22nd day of April, A. D. 1936, and accepted by said corporations, a copy of which said letter is annexed to said petition of said Receivers filed herein on the 23rd day of April, A. D. 1936, as Exhibit "A" thereto;

And it appearing to the Chancellor that said offer, as supplemented and modified as aforesaid, proposes a final settlement of certain differences and disputes between the receivership estate and Missouri-Kansas Pipe Line Company, on the one hand, and said Columbia Oil and Gasoline Corporation and Columbia Gas and Electric Corporation and others on the other hand;

And it further appearing to the Chancellor that due notice of said hearing was given by the Register in Chancery to Stockholders and creditors of Missouri-Kansas Pipe Line Company, pursuant to the provisions of the order in that behalf entered on March 9, 1936, and the matter having been fully heard upon oral testimony taken at said hearings and upon certain other testimony heretofore taken in this cause relating to a previous offer of the settlement of said disputes and differences, and upon exhibits duly offered and received in evidence, and all parties in interest having been fully heard, and no party in interest having appeared in opposition to the prayers of the Receivers' petition of April

23, 1936, and Robert W. Woolley, Franklin B. Richards and Hubert E. Howard, as the New York Protective Committee for Stockholders of Missouri-Kansas Pipe Line Company, and Alfred B. Haake, George B. Knepper, Jeff W. Handy, [fol. 367] O. W. Kirkpatrick and Fred F. Wilkison, as the Chicago Stockholders Protective Committee of Missouri-Kansas Pipe Line Company, and W. G. Maguire, as an individual stockholder, having assented to the entry of an order in accordance with the prayers of said petition of the Receivers, it is, upon motion of Arthur G. Logan, Esq., solicitor for said Receivers,

Ordered by the Chancellor:

1. The said offer of said Columbia Oil and Gasoline Corporation and Columbia Gas and Electric Corporation, as set forth in the letters hereinabove mentioned, is approved as fair and reasonable and in the best interests of the receiver-ship estate and of Missouri-Kansas Pipe Line Company and its creditors and stockholders, and said Receivers are hereby authorized and directed to accept said offer, as supplemented and modified as above set forth.
2. Said receivers are hereby authorized and directed to execute and consummate said settlement embodied in said offer, as supplemented and modified, and to that end are authorized and directed to take all steps necessary in connection therewith and to execute and deliver such releases, contracts, assignments and other instruments of writing as may be necessary, convenient or proper in order to carry out the terms and conditions of said offer, as supplemented and modified, and the acceptance thereof, and as may be approved by their counsel.
3. The hearing hereinabove referred to is hereby adjourned until the 29th day of May, A. D. 1936, for the purpose of determining the number of shares of the common stock of Panhandle Eastern Pipe Line Company which Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, shall be authorized to sell pursuant to the provisions of paragraph 4 (b) of said letter of April 22, 1936, (Exhibit "A" to the petition of April 23, 1936, of said Receivers) in order to raise money to pay claims adjudicated herein and administration fees and expenses allowed herein and for such other purposes as this Court shall determine, and in order that such

determination may be made all parties in interest claiming to be entitled thereto are hereby directed to file their petitions for compensation for services and allowances for their expenses and services of their counsel, therein stating generally the services rendered by the petitioner and his counsel, on or before the 29th day of May, A. D. 1936.

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[fol. 369] Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 2:45 o'clock P. M. on Tuesday, May 19, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, Ashton W. Hawkins, F. Cliffe Johnston, Dean Mathey, William P. Philips and C. Ray Phillips, being all of the Directors and constituting a quorum.

[fol. 370] There was also present during a part of the meeting, Mr. Edward N. Goodwin, General Counsel for the Company.

The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

Approval of Minutes

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Settlement Between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company

The Chairman referred to the report made to this Board at its meeting held May 5, 1936, with reference to the order [fol. 371] entered by the Court of Chancery of the State of Delaware on April 29, 1936, directing the Receivers of Missouri-Kansas Pipe Line Company to accept and carry out the offer of settlement of Columbia Oil & Gasoline Corporation dated January 31, 1936, as supplemented and modified. He explained why it would be advantageous to Panhandle Eastern Pipe Line Company as well as to Columbia Oil & Gasoline Corporation and the Receivers of Missouri-Kansas Pipe Line Company, the sole beneficial stockhold-

ers of this Company, for the Company to take the corporate action on its part necessary to carry out the terms of said settlement. He submitted to the meeting copies of the offer of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation to the Receivers, dated January 31, 1936; the letter dated March 5, 1936, from Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation to Frank P. Parish and Dupuy G. Warriek; and the letter dated April 22, 1936, from the Receivers to Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, accepted by the latter two corporations, copies of which are as follows:

Columbia Oil & Gasoline Corporation

Sixty-One Broadway

New York

January 31, 1936.

Messrs. Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, Wilmington, Delaware.

DEAR SIRs:

You are familiar with the relations which have heretofore existed between Missouri-Kansas Pipe Line Company, yourselves as Receivers thereof, Panhandle Eastern Pipe Line Company, Panhandle Corporation, Columbia Gas & Electric Corporation and the undersigned Columbia Oil & Gasoline Corporation, and particularly with the differences of opinion which have existed between the Missouri-Kansas interests on the one hand and the interests of Columbia Gas & Electric Corporation and the undersigned on the other with respect to the management and affairs of Panhandle Eastern Pipe Line Company. The principal disagreement has arisen out of the problem of marketing Panhandle Eastern's available gas.

As the result of the contract dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company, under which Panhandle Eastern is afforded the opportunity to supply the City of Detroit with natural gas, the principal point of our controversy, namely, the marketing of Panhandle Eastern's gas, would seem to be removed inasmuch as this market should absorb all of

the gas which we believe Panhandle Eastern can now safely contract to supply at such distance from its production area.

After a comprehensive study and extensive negotiations, we believe that, with this contract as a foundation, an opportunity is afforded to adjust the controversies heretofore existing between Missouri-Kansas interests and ours on terms we believe manifestly advantageous to your interests, and which at the same time would permit the financial rehabilitation of Panhandle Eastern and would materially strengthen the financial position of Missouri-Kansas.

We enclose a copy of the contract of August 31, 1935, between Panhandle Eastern and Detroit City Gas Company. You will observe this contract provides for the sale of gas by Panhandle Eastern to Detroit City Gas Company for a firm period of fifteen years on terms which we believe you will agree to be highly advantageous to Panhandle Eastern. [fol. 373] The contract provides for delivery of natural gas at a point near the City of Detroit. Panhandle Eastern's pipe line system extends only to the Illinois-Indiana State line and its present capacity is not sufficient to transport the volume of gas that may be required under the Detroit Contract. It is estimated that the cost of the necessary increase in the capacity of the existing pipe line, with additional compressor stations and necessary equipment, will be approximately \$8,600,000 and that the cost of building or acquiring an extension to Detroit will be approximately \$8,300,000 more.

At the present time, as you know, the outstanding securities of Panhandle Eastern are held as follows:

Securities	Owned by	
	Columbia Oil	Panhandle Corporation *
6% Mortgage Bonds	\$18,200,000	
6% Promissory Notes	4,945,500	\$4,945,500
Common Stock	1,149 sh.	1,149 sh.

* At the present time Panhandle Corporation has outstanding \$4,940,000 of Two-Year 6% Collateral Trust Notes (now in default as to principal and interest), which Notes are now held by others, and which are guaranteed as to principal and interest by Missouri-Kansas. Missouri-Kansas now owns 25% of the Common Stock of Panhandle Cor-

The Panhandle Eastern Notes aggregating \$9,891,000 have long been in default as to interest, which default entitles the holders of such Notes to call on the Trustee to accelerate their maturity and also constitutes an event of default under the mortgage securing the Bonds. Furthermore the \$4,945,500 of Panhandle Eastern Notes, as well as all the shares of Panhandle Eastern Common Stock, [fol. 374] owned by Panhandle Corporation are now pledged to secure the \$4,940,000 principal amount of defaulted Two-Year 6% Collateral Trust Notes issued by Panhandle Corporation mentioned above.

It would seem manifestly impractical under present conditions for Panhandle Eastern to refund its present defaulted obligations, much less to finance the necessary capital expenditures amounting (exclusively of the investment in the extension to Detroit) to approximately \$8,600,000 in new money, except through those already having a financial interest in its securities. Furthermore, such financing, even under favorable conditions, is costly. Under the proposal stated below, this financing would be done without cost to Panhandle Eastern or Missouri-Kansas, the entire cost of financing being borne by Columbia Gas & Electric Corporation and ourselves.

Without prejudice either to the claims asserted in your suit against us or to our contention that such claims are groundless, we believe that with your cooperation a formal contract embracing the following plan, which we and Columbia Gas & Electric Corporation are able and willing and hereby offer to enter into, would provide a satisfactory compromise of our conflicting claims:

(1) We would agree to fund the entire issue of outstanding 6% Promissory Notes of Panhandle Eastern into 6% Preferred Stock in the amount and of the character hereinafter stated. This would be accomplished in connection with our acquisition, as hereinafter explained, of substantially all of the Notes and the 75% of the stock of Panhandle Corporation held by others.

poration, the remaining 75% of the Common Stock being owned by others; so that at the present time Missouri-Kansas' interest in Panhandle Corporation is the ownership of 25% of the Common Stock, the value of which is subject to the \$4,940,000 defaulted Notes of Panhandle Corporation, which in turn are guaranteed by Missouri-Kansas.

(2) We would further agree to cause Panhandle Eastern to be recapitalized as hereinafter more fully set forth, and [fol. 375] to cause Missouri-Kansas to regain its direct ownership of one-half of the Common Stock of Panhandle Eastern to be issued and outstanding prior to the new financing mentioned in paragraph (6) below.

(3) We would cancel the guaranty by Missouri-Kansas of the principal and interest of the Panhandle Corporation Notes, now amounting to more than \$5,500,000, and would release Missouri-Kansas of all liability on this guaranty.

(4) The claim of Panhandle Eastern and its subsidiaries against Missouri-Kansas in the sum of \$42,606.74 would be cancelled.

(5) We would agree to pay to you, as Receivers of Missouri-Kansas, the sum of \$300,000 in cash, to be applied toward the expenses of the receivership and liquidating other obligations of Missouri-Kansas.

(6) The additional financing necessary to provide funds needed by Panhandle Eastern (estimated at approximately \$8,600,000) would be provided by an issue of 160,000 shares of Common Stock of Panhandle Eastern, to be sold at \$25 per share (producing \$4,000,000), to which Missouri-Kansas stockholders would be given the right to subscribe for one-half but would not be obligated to subscribe, we agreeing to take the entire balance not so subscribed; the remainder of the necessary funds (not to exceed \$4,600,000) Columbia Gas & Electric Corporation would agree to supply by the purchase at par of 6% Bonds of Panhandle Eastern.

(7) In order to minimize the financial burden on Panhandle Eastern, we and Columbia Gas & Electric Corporation [fol. 376] would agree to cause to be financed and constructed the necessary pipe line extension to the city gate at Detroit, without cost or expense or financial obligation of any kind on Panhandle Eastern. The existing pipe line at present owned by Indiana Gas Transmission Corporation (a subsidiary of the undersigned) and representing a cash investment of more than \$1,500,000, would be used as far as a point near Zionsville, Indiana; and Michigan Gas Transmission Corporation (a subsidiary of Columbia Gas & Electric Corporation) would construct and own a pipe

line from that point to the Place of Delivery specified in the Detroit contract at a cost now estimated at about \$6,780,000. Contracts would be entered into whereby Panhandle Eastern would deliver to Michigan Gas Transmission Corporation (either directly or through the intervention of Indiana Gas Transmission Corporation) and Michigan Gas Transmission Corporation would in turn deliver to Detroit City Gas Company, all of the gas required for delivery under the Detroit Contract. Our engineers have calculated that, at the rates contemplated in these contracts, Panhandle Eastern would receive an average price of about 26½ cents per MCF when the line operates at 70% load factor, and that these rates would produce, for the companies involved, an equitable apportionment of the net earnings to be derived from the Detroit Contract.

(8) In consideration of the taking of the foregoing action by us and by Columbia Gas & Electric Corporation, you would agree

(a) To dismiss the suit brought by you in the United States District Court for the Southern District of New York on July 18, 1935, and execute a general release, as hereinafter more fully set forth;

[fol. 377] (b) To distribute to Missouri-Kansas stockholders, in the manner hereinafter set forth, the warrants evidencing the right to subscribe for additional Common Stock of Panhandle Eastern which you or Missouri-Kansas would receive as a stockholder in Panhandle Eastern;

(c) To join with us, Columbia Gas & Electric Corporation and Panhandle Eastern in an agreement for the cancellation of the contract dated September 17, 1930 between Missouri-Kansas, The National City Company and the undersigned, including specifically the provisions thereof with respect to the purchase or sale of gas or the execution of gas contracts; and

(d) To join with us in taking appropriate corporate action to liquidate Panhandle Corporation in such manner that through such liquidation you would receive one-half of the Common Stock of Panhandle Eastern and we would receive the Preferred Stock.

The following is a more detailed explanation and discussion of the several steps involved in this plan and of the reasons underlying its various provisions.

As stated above, the securities of Panhandle Eastern at present owned by Panhandle Corporation are pledged to secure its \$4,940,000 of Two-Year 6% Collateral Trust Notes, which are now in default. Panhandle Corporation has outstanding 1,000 shares of capital stock, of which you, as Receivers, hold 250 shares. We have made offers to the holders of the other 750 shares of stock and to the holders of the Notes to acquire such stock and Notes, subject to certain conditions, and these offers have been accepted by the holders of the 750 shares of stock and by the holders of over 97% of the Notes. As part of this purchase [fol. 378] price we are giving up approximately \$3,613,500 of Panhandle Eastern Bonds. We propose that, if we acquire these Notes and stock, Panhandle Corporation be dissolved and liquidated in such manner that you receive Panhandle Corporation's half of the Common Stock of Panhandle Eastern. In connection with this liquidation we would cause Panhandle Corporation to satisfy such of its Two-Year 6% Collateral Trust Notes as we shall not have acquired, and we, as holders of the remainder of said Notes, would in this general plan release the guaranty by Missouri-Kansas of the principal and interest thereof. The accomplishment of this liquidation in the most expeditious manner would require your cooperation with us in the taking of the appropriate corporate action.

It is proposed that Panhandle Eastern be recapitalized so that its outstanding securities (before the additional financing required to increase the capacity of its pipe line) would consist of \$18,200,000 principal amount (subject to reduction by operation of the sinking fund) of First Mortgage Bonds, \$11,000,000 par value of Preferred Stock and such number of shares of Common Stock without par value as would have an initial book value of approximately \$25 per share after making certain adjustments hereinafter specified.

The First Mortgage Bonds would be the existing Twenty-Year Sinking Fund Mortgage Bonds, Series A, 6%, issued under the Mortgage Trust Indenture dated as of October 1, 1930, amended in the general respects (except as to interest and sinking fund provisions) set forth in the plan of

Readjustment of Funded Debt and Capitalization dated March 12, 1934, with which you are familiar. They would mature October 1, 1940, would bear interest at the rate of 6% per annum and would be subject to a cumulative sinking fund calculated to equal the principal amount of the [fol. 379] entire issue over the fifteen-year term period of the Detroit Contract.

The \$11,000,000 par value of Preferred Stock, which the plan contemplates we are to receive, is intended to reflect approximately the amount of investment which we would by then have made in the securities of Panhandle Eastern junior to the Bonds, in excess of the investment made by Missouri-Kansas. This would include the cost to us of the one-half of the 6% Promissory Notes and additional Common Stock of Panhandle Eastern which we acquired directly from Panhandle Eastern and the cost to us (payable in Bonds and cash) of the Notes and 75% of the stock of Panhandle Corporation (both purchased at substantially below issue prices), an advance to Panhandle Corporation to pay its obligations other than the Notes, and the \$300,000 cash which we have been asked to provide, and which we are willing to provide, for your use toward meeting the expenses of the receivership of Missouri-Kansas and the settlement of claims against it.

The Preferred Stock would have a par value of \$100 per share; would be entitled to dividends at the rate of 6% per annum, dividends to be cumulative only to the extent earned (depreciation and depletion being taken at no increase over the current rate) until December 31, 1936; thereafter to be fully cumulative; would be redeemable at any time in whole or in part at 110% plus accrued dividends (the premium to be waived in case of partial redemption from time to time out of earnings so long as the undersigned or Columbia Gas & Electric Corporation or their respective subsidiaries or affiliates own said stock); and would be entitled to full voting rights, share for share with the Common Stock; and each share would be convertible at the option of the holder into four shares of Common Stock at any time up to the date of redemption. While any of the Preferred Stock remains outstanding there must be set aside from earnings each year 4% of tangible property [fol. 380] account to provide for depreciation, depletion and

amortization of investment before payment of dividends on the Common Stock.

The Common Stock would consist of such number of shares without par value as would have a book value of approximately \$25 per share, such book value to be determined in the following manner: the consolidated balance sheet of Panhandle Eastern and subsidiaries as of December 31, 1935 would be adjusted (1) to give effect to the capital structure above set forth and (2) to write off the claims of Panhandle Eastern against Missouri-Kansas; the resulting net worth applicable to the Common Stock would be divided by \$25; and the quotient, to the next lower even number of full shares, would be the number of shares of Common Stock. Applying the foregoing principles to the preliminary figures subject to audit, the number of shares would be 648,652.

In addition to the 4% of tangible property account to be set aside out of earnings as mentioned above, Panhandle Eastern would also set aside out of earnings each year, before payment of dividends on the Common Stock, an amount sufficient to amortize over a ten-year period certain assets of a non-realizable nature now carried on its books at \$3,053,391.53 (less reserves heretofore established in respect thereof and amounting, as of December 31, 1935, to \$123,105.13).

The Certificate of Incorporation of Panhandle Eastern would be amended so as to provide for cumulative voting for the election of directors. The Board of Directors would be reconstituted so as to consist of 9 members, initially selected by application of the cumulative voting rights in accordance with the new capitalization and its ownership as proposed herein.

The effect of the foregoing would thus be to enable the Missouri-Kansas interests to regain their position as beneficial owners of one-half of the Common Stock of Panhandle Eastern, with the right of cumulative voting in the election of directors. This Common Stock would be subject only to senior securities representing substantially the additional investment made by the undersigned subsequently to the original Common Stock investment, and would be freed from the burden of the guaranty by Missouri-Kansas (amounting to some \$5,500,000) of the principal and interest of the Panhandle Corporation Notes.

The resulting distribution of the securities of Panhandle Eastern would be as follows:

Securities	Owned By		
	Columbia Oil	Receivers	Others
6% Mortgage Bonds	\$14,586,500	—	\$3,613,500
Preferred Stock	11,000,000	—	—
Common Stock (approximately)...	324,326 sh.	324,326 sh.	—

In terms of Panhandle Eastern's book value (using December 31, 1935 consolidated balance sheet figures), the following table shows what the net assets of Panhandle Eastern would be under the proposed plan:

	Under Proposed Plan
Net Assets applicable to all securities	\$45,458,943
Less claim against Mo-Kan (which Panhandle Eastern will release)	42,607
	<hr/>
Less Bonds	\$45,416,336
	18,200,000
	<hr/>
Balance after Bonds	\$27,216,336
Less Preferred Stock	11,000,000
	<hr/>
Balance for Common Stock	\$16,216,336
	<hr/>
One-half of Common Stock	\$ 8,108,168
Claim against Mo-Kan	42,607
	<hr/>
Net interest of Receivers	\$ 8,150,775

[fol. 382] This table does not purport to reflect the value of the assets as affected by earnings, nor does it reflect the contemplated additions to Panhandle Eastern's property nor the additional Common Stock and Bonds to be issued therefor.

As stated above, it is estimated that, in order to carry out the Detroit Contract, Panhandle Eastern will require about \$8,600,000 of additional capital to increase its present capacity to deliver gas at the Illinois-Indiana State line. The plan contemplates the raising of \$4,000,000 on April 1, 1936 through the issuance of 160,000 shares of additional Common Stock at \$25 per share and the raising of the

remaining amount through the sale of up to \$4,600,000 of 6% Bonds, as needed, within three years.

The stock would be offered by Panhandle Eastern for subscription, pro rata to the holders of its Common Stock, subscription rights issued to you as Receivers or to Missouri-Kansas to be distributed pro rata (according to the total number of votes represented by the outstanding stock) to the stockholders of Missouri-Kansas who satisfactorily establish that they are such stockholders, and to be exercisable only by such stockholders or their respective assignees. The time for the exercise of the warrants so distributed would be extended until 90 days after the termination of the receivership, but in no case beyond October 1, 1936. We would subscribe for our own share of such additional stock, we would purchase any shares not subscribed for by your stockholders and, if the time for making subscriptions should be extended, we would temporarily advance the funds to Panhandle Eastern to be repaid with interest at 6% when the subscriptions were made, to assure the availability of the necessary \$4,000,000 to Panhandle Eastern on April 1, 1936. The \$4,600,000 of additional Bonds as needed would be purchased by Co-[fol. 383] lumbia Gas and Electric Corporation at par. No compensation would be paid to us or to Columbia Gas & Electric Corporation in connection with this financing.

As you know, the existing business of Panhandle Eastern has not been sufficient to yield it an adequate return on its investment. While, of course, we are not in a position to make any representations as to future earnings and do not do so, nevertheless Columbia Gas & Electric Corporation has caused its engineers to make an extensive study of the probable effects of the Detroit Contract on the earnings of Panhandle Eastern and they have estimated that this contract (after giving effect to the proposed gas contracts referred to above) would produce, during the first full year of operation, sufficient net operating revenue, after reasonable charges for depreciation and depletion, to cover all interest charges and dividends on the Preferred Stock contemplated by the plan and thereafter would produce additional net earnings which would be available for the Common Stock on the capitalization contemplated herein. These estimated earnings and the interest of Missouri-Kansas and its stockholders therein under the proposed plan, as compared with their interest in the earnings

for the latest twelve-months' period under the existing financial structure, are more clearly shown by the following table:

	Consolidated Earnings for 12 Months Ended December 31, 1935	Estimated Earnings Under Proposed Capitalization for 5th Year of Operation under Detroit Contract
Total Gross Revenue (inc. Other Income)	\$3,614,877	\$9,785,000
Operation and Maintenance	\$1,064,409	\$3,121,000
Provision for Retirements and Depletion..	768,197	2,247,000
Taxes (inc. Federal income taxes)	284,598	1,366,000
Total Operating Expenses	\$2,117,204	\$6,734,000
Gross Corporate Income	\$1,497,673	\$3,051,000
Interest (other than Note interest) and Amortization of Debt Discount and Expense on First Mortgage Bonds...	1,230,267	1,251,000
Balance for Junior Securities	\$267,406	\$1,800,000
Note Interest	593,460 *	—
Preferred Stock Dividends	—	460,000
Balance for Common Stock	\$326,954	\$1,140,000

* Note interest for one year; as of December 31, 1935, there was Note interest of \$1,383,091.50 in arrears to be made up before any earnings would be available for the Common Stock.

We should be pleased to submit to your examination the data from which the engineers have drawn these estimates, in order that you may make your own decision as to the correctness thereof.

In order to effect a complete settlement of the points of difference among the parties, it is essential that your suit be dismissed and that you and Missouri-Kansas give the defendants in that suit, Panhandle Eastern, their subsidiary companies, and the officers and directors of all said companies, a general release of all your claims. For the same reason the plan also provides for the cancellation [fol. 385] of the obligations of the parties under the contract dated September 17, 1930, under which we made our original investment in the stock of Panhandle Eastern, including the obligations with respect to the purchase of gas from Panhandle Eastern by Missouri-Kansas and Co.

Indiana Gas & Electric Corporation, inasmuch as the obligation of Panhandle Eastern under the Detroit Contract would be as great as it would be justified in assuming under present conditions.

Due to unfor-seen complications, we were unable to present this plan to you as early as we had originally hoped, so that it will be obviously impossible for you to obtain the approval thereof by the Court of Chancery of the State of Delaware in time to enable Panhandle Eastern to notify Detroit City Gas Company by February 1, 1936, as required by Section 7 of Article II of the Detroit Contract, that the financial arrangements contemplated by the plan have been completed. We are accordingly planning to make arrangements to meet this date, which will in no way prejudice your position under the plan and which will preserve for your stockholders the subscription rights which the plan contemplates they are to receive, provided that you accept promptly and secure, on or before March 15, 1936, the approval by the Court of the action necessary to carry it into effect.

The foregoing plan is conditioned upon the following: (1) the execution by you on or before March 15, 1936 of the formal documents necessary to carry out this plan together with the approval thereof by the Court of Chancery of the State of Delaware and the approval of any other Federal or State Courts or public authorities whose approval shall be necessary and from none of which approvals appeal shall lie or the right to such appeal shall be waived by all parties; (2) the appeal of such Federal or [fol. 386] State public authorities as shall be required by law for the consummation of the plan; and (3) that the sellers of 75% of the stock and approximately 97% of the Two-Year 6% Collateral Trust Notes of Panhandle Corporation who have contracted to sell the same to us shall perform their contracts so that we shall be able to acquire all of the debt and 75% of the stock of Panhandle Corporation. If you should accept the foregoing proposal and if thereafter for any reason not involving a breach of the Detroit Contract by Panhandle Eastern, Indiana Gas Transmission Corporation or Michigan Gas Transmission Corporation, the Detroit Contract should fail to be performed, then all of the obligations of the parties then unperformed would be no longer binding.

The action called for by the foregoing proposal would be

taken by the several parties concurrently on or before April 1, 1936, except that the performance of such action as could not in the nature of things be taken concurrently would be taken at the times indicated above.

The advantages of the proposed plan to the stockholders of Missouri-Kansas (assuming the consummation of the Detroit Contract) may be summed up as follows:

1. It would immediately restore to Missouri-Kansas a full one-half direct interest in the Common Stock of Panhandle Eastern, with Preferred Stock substituted for senior obligations which are now in default.

2. Missouri-Kansas would be released from its contingent liability of over \$5,500,000 in respect of its guaranty of the Panhandle Corporation Notes.

3. A means would be provided for terminating the receivership of Missouri-Kansas.

[fol. 387] 4. Your stockholders would have a direct opportunity in the further equity financing of Panhandle Eastern and consequently in any increase in its earning power.

5. The direct ownership by you and your stockholders of Common Stock of Panhandle Eastern, coupled with the provisions for cumulative voting would give the Missouri-Kansas interests representatives on the Board of Directors of Panhandle-Eastern, and consequently a direct voice in its management.

Under date of January 29, 1936, a consent decree was entered in the District Court of the United States for the District of Delaware, in the cause entitled United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, Defendants in equity No. 1099. A copy of said decree is enclosed. The within offer should be read in the light of its provisions.

We suggest that you give this offer your careful consideration and advise us promptly as to your willingness to accept it. In the event of your acceptance, we shall be pleased to prepare and submit the formal contract embodying the above terms, so that proceedings may be instituted promptly for its approval by the Chancery Court of the State of Delaware within the time limit above set forth.

Yours very truly, Columbia Oil & Gasoline Corporation,
by Charles A. Munroe, President.

[fol. 388] Messrs. Henry T. Bush and C. Ray Phillips, as
Receivers of Missouri-Kansas Pipe Line Company.

DEAR SIRs:

The undersigned Columbia Gas & Electric Corporation
concurs in the foregoing letter and, if you accept the plan
set forth therein, will agree

(a) To take all of the action on its part set forth therein;
and

(b) To enter into an agreement to furnish, to the extent
that it may be necessary, the funds required by Columbia
Oil & Gasoline Corporation to enable it to carry out its
obligations therein set forth.

Yours very truly, Columbia Gas & Electric Corpora-
tion; by E. Reynolds, Jr., Vice-President.

The Ambassador, Park Avenue and 51st Street, New York

March 4, 1936.

Columbia Oil & Gasoline Corporation, 61 Broadway, New
York, N. Y.

GENTLEMEN:

Under date of January 31, 1936, you submitted to the Re-
ceivers of Missouri-Kansas Pipe Line Company a proposal
of settlement of the controversies existing between Mis-
[fol. 389] souri-Kansas Pipe Line Company and Columbia
Oil & Gasoline Corporation and Columbia Gas & Electric
Corporation, which proposal had been negotiated by us
some time previously.

Two days later the Receivers mailed you a letter pur-
porting to reject this offer for the reason there stated that
the proposal did not comply with the stipulation under
which the consent decree of January 29th was entered in
the District Court of the United States for the District of
Delaware in the cause entitled United States of America,
petitioner, against Columbia Gas & Electric Corporation,
et al., in Equity No. 1099, and the further reason that the
proposal was not acceptable to them.

We are advised that this action was taken without notice
to creditors and stockholders whose interests would be af-
fected by the acceptance or rejection of this proposal.

Substantial creditors and stockholders of Missouri-Kansas Pipe Line Company, upon learning of this action of the Receivers, have asked us to undertake to have this proposal resubmitted so that it may be presented to the Chancery Court of Delaware for consideration after due notice to stockholders and creditors whose interests are to be affected. These stockholders and creditors believe the proposal should be accepted and desire an opportunity to urge the acceptance of it by the Chancery Court of Delaware.

In the interest of fairness to creditors and stockholders of Missouri-Kansas Pipe Line Company, we ask that this proposal of settlement be resubmitted.

The proposal of January 31, 1936 required acceptance by the Receivers and approval of the Chancery Court of Delaware on or before March 15, 1936. It is manifestly impossible to fairly present this matter to the Court by that date. Accordingly we suggest that the time within which the offer [fol. 390] must be accepted by the Receivers and approved by the Court be extended to May 1, 1936.

If you renew this proposal, may we suggest that your letter of transmittal include a statement of any changes that have taken place in the general situation affecting this proposal since January 31, 1936, and, if you are aware of the basis of the Receivers' contention that this proposal does not comply with the terms of the stipulation, a statement with respect to this matter.

Very truly yours, (Signed) Frank P. Parish, Dupuy
G. Warrick.

March 5, 1936.

Messrs. Frank P. Parish and Dupuy G. Warrick, Ambassador Hotel, Park Avenue and 51st Street, New York, N. Y.

DEAR SIRs:

We acknowledge receipt of your letter of the 4th instant and in reply state that you may consider our offer of January 31, 1936, addressed to Messrs. Bush and Phillips, Receivers of Missouri-Kansas Pipe Line Company, as still in force so that it may be submitted to the Chancery Court of Delaware as you propose. We also are willing that the time within which the offer must be accepted by the Receivers and approved by the Chancery Court be extended to May 1, 1936.

[fol. 391] Referring to your request for a statement of important developments affecting this proposal which have taken place since January 31, 1936, we would say as follows:

On January 31, 1936, Panhandle Eastern Pipe Line Company entered into an agreement under which it received from Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation the assurance of sufficient financial assistance to enable it to comply with its Detroit Contract, by providing that they will undertake the construction of the new pipe line to connect with the Detroit market and will provide the funds needed by Panhandle Eastern for the reinforcement of its present pipe line up to the necessary delivery capacity. This agreement was not binding on Panhandle Eastern if, within the twenty days specified in clause (b) of Article V of the stipulation accompanying the Decree of the United States District Court for the District of Delaware entered on January 29, 1936, (copy of which has already been furnished you) it arranged for the necessary financing otherwise than through the assistance of Columbia Oil and Columbia Gas. Panhandle Eastern did not, within such twenty day period, arrange for the necessary financing from any other source and thereupon became bound by the said agreement. Furthermore, on February 28, 1936, Mr. Gano Dunn, the Trustee under the said Decree, approved of this arrangement with the two Columbia companies. A copy of his letter of that date to Panhandle Eastern so expressing his approval, together with a copy of the enclosure mentioned therein, is attached hereto.

Panhandle Eastern Pipe Line Company also on January 31, 1936, notified Detroit City Gas Company that it had arranged for the financing of the construction of the connecting line and of the reinforcement of its present pipe line pursuant to Section 7 of Article II of the contract [fol. 392] dated August 31, 1935, between them, and has received Detroit City Gas Company's acceptance of such notice and of the adequacy of the financial assurance contained therein.

On February 6, 1936, Panhandle Eastern Pipe Line Company retired all of its previously outstanding issue of 6% Promissory Notes, due October 2, 1950, which had been in default as to interest and, by amendment of the Mortgage Trust Indenture securing its Mortgage Bonds it cured its defaults in respect to said Bonds. It accomplished these objectives by a recapitalization as the result of which its

outstanding securities and the ownership thereof are as follows:

Securities of Panhandle Eastern	Owned By		
	Columbia Oil	Panhandle Corp.	Public
Mortgage 6% Bonds *.....	\$14,574,500	\$ —	\$3,625,500
Notes due September 1, 1937 †..	800,000	800,000	—
Preferred Stock (par value)...	4,700,000	4,700,000	—
Common Stock	1,149 shs.	1,149 shs.	—

(*) The Trustee under the Mortgage now holds \$315,000 cash in the Sinking Fund and is calling for tenders of Bonds to exhaust said funds.

(†) These notes bear no interest until September 1, 1936, and 5% interest for one year thereafter, payable at maturity, and are convertible at the option of the holders, par for par, into Preferred Stock.

The Preferred Stock now outstanding has the voting and conversion rights and other preferences described in our said offer dated January 31, 1936. \$1,600,000 (par value) additional thereof has been authorized to be issued on the conversion of the presently outstanding Notes of the same principal amount.

On and after February 6, 1936, the undersigned Columbia Oil & Gasoline Corporation acquired by purchase or made provision for the payment of all of the presently outstanding \$4,940,000 principal amount of Two-Year 6% Collateral Trust Notes of Panhandle Corporation, which [fol. 393] are now in default as to principal and interest and which are unconditionally guaranteed as to principal and interest by Missouri-Kansas Pipe Line Company. These Notes are collaterally secured by pledge of the Notes, Preferred Stock and Common Stock of Panhandle Eastern owned by Panhandle Corporation.

On February 6, 1936, the undersigned, Columbia Oil, also purchased 750 shares (75%) of the common stock of Panhandle Corporation and loaned to Panhandle Corporation the sum of \$187,876.28 for the discharge of liabilities other than its Two-Year 6% Collateral Trust Notes and its notes evidencing these loans.

Within the period specified in the above mentioned Decree, Columbia Oil has transferred to Mr. Gano Dunn, as Trustee thereunder, the Preferred Stock and Common Stock of Panhandle Eastern owned by it as shown in the above table.

The nine directors of Panhandle Eastern, selected pursuant to paragraph (a) of Section III of the above mentioned Decree are at present Messrs. Gano Dunn, Joseph A.

Bower, James L. Harrop, Dean Mathey, William P. Philips, Henry T. Bush, C. Ray Phillips, Ashton W. Hawkins and F. Cliffe Johnston. The last two named were selected by Mr. Dunn to be independent of either Columbia or Missouri-Kansas interests and Columbia Oil has advised Mr. Dunn that, as to Messrs. Henry T. Bush and C. Ray Phillips and to the two so selected by him, the nomination applies also to the next annual election of directors which will occur on March 9, 1936.

Replying to your request that if we are aware of the basis of the Receivers' contention that our proposal did not comply with the terms of the stipulation, we should enclose a statement with respect to this matter, we beg to say that we have not been advised by the Receivers of the basis for [fol. 394] their contention. With respect to certain provisions of the offer which you and we have heretofore discussed, we can add the following as a clarification of their meaning.

The plan of financing the whole project of supplying the Detroit market with natural gas from Panhandle Eastern Pipe Line Company, as set forth in our said offer of January 31, 1936, embodied the terms on which the undersigned Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation would be willing to assist in this financing. (Their agreement with Panhandle Eastern dated January 31, 1936, described in the second paragraph of this letter, is in conformity therewith.) The provision in said plan that Columbia Gas would construct or acquire the necessary connecting pipe line from Panhandle Eastern's present pipe line to the city gate at Detroit in no way restricted Panhandle Eastern in its freedom to make other arrangements for this financing within the period provided in the above mentioned Decree entered on January 29, 1936. On the contrary, this provision, acceptance of which was optional with Panhandle Eastern, relieves Panhandle Eastern of the burden of raising approximately half of the total new capital funds needed for the whole Detroit project.

Another of the provisions of our said offer dated January 31, 1936, contemplated the cancellation of those provisions of the contract dated September 17, 1930, (between Missouri-Kansas, The National City Company and the undersigned Columbia Oil) which relate to the execution of contracts for the purchase of gas from Panhandle Eastern by

Columbia Gas and Missouri-Kansas. The differences of opinion arising from varied meanings attributed to these provisions constitute a part of the claims asserted by the Receivers of Missouri-Kansas in their suit against us and [fol. 395] others which our said offer dated January 31, 1936, proposed to settle. If any settlement is to be made, manifestly it should be a settlement of all controversies. The requirements of the Detroit Contract so absorb the capacity of Panhandle Eastern's pipe line as then constituted that it can not make additional commitments for substantial quantities of firm gas. Furthermore, should it hereafter become possible to increase the capacity of the line beyond the requirements of the Detroit Contract, this arrangement would not prevent Panhandle Eastern from selling its then available gas to Missouri-Kansas or to any other purchaser on the terms which might then appear most advantageous to it.

If there are any other features of this matter about which you would care to make inquiry, we should be glad to have you take them up with us.

Yours very truly, Columbia Oil & Gasoline Corporation
by Charles A. Munroe, President.

The undersigned, Columbia Gas & Electric Corporation, concurs in the foregoing letter.

Columbia Gas & Electric Corporation by E. Reynolds, Jr., Executive Vice-President.

[fol. 396] Gano Dunn, 80 Broad Street, New York

February 28, 1936.

Panhandle Eastern Pipe Line Company, 61 Broadway, New York City.

DEAR SIRs:

I hereby notify you that I have approved the financial and contractual arrangement made by you with Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation on January 31, 1936, as indicated in the enclosed letter from me to them dated February 28, 1936.

It is understood that my approval will also be required of the terms and conditions of the contract or contracts to be made by you (as provided in said agreement of January

31, 1936) with Indiana Gas Transmission Corporation and Michigan Gas Transmission Corporation, or either of them.

Yours very truly, Gano Dunn, Trustee under the Decree dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware.

Encl.

[fol. 397] Gano Dunn, 80 Broad Street, New York

February 28, 1936.

Columbia Oil and Gasoline Corporation, Columbia Gas and Electric Corporation:

GENTLEMEN:

I am hereby indicating my approval of your contract of January 31, 1936, with Panhandle Eastern Pipe Line Company, provided you agree that in connection with paragraph 1 (d) and 3 (a) of said contract, I, as Trustee, may cause the board of Panhandle Eastern to extend the time for exercising subscription rights to the half of the proposed issue of common stock not offered to Columbia Oil until the private claims of Missouri-Kansas against the Columbia companies have been settled (either by litigation or compromise) or until such other time and under such conditions as I may determine to be proper in the interests of Panhandle Eastern and its shareholders, but in no event later than January 1st, 1937, and that such extension of the time for exercising subscription rights shall have the same effect as the extension in the time of payment provided for by paragraph 3 (a) of said contract: and provided also that during the same period I may cause said Board to offer the subscription rights to the half of such stock not offered to Columbia Oil to such other person or persons who as a result of such settlement, or non-settlement, shall then be entitled thereto. This would mean that Columbia Oil, immediately upon the offer of the stock, would [fol. 398] subscribe to one half of the issue of common stock and would under paragraph 3 (a), as hereby modified, advance the amount represented by the remainder of the stock-issue.

Yours very truly, Gano Dunn, Trustee.

The above is hereby accepted: Columbia Gas & Electric Corporation, by E. Reynolds, Jr., Exec. Vice President; Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President.

Columbia Gas & Electric Corporation, 61 Broadway, New
York, N. Y.

April 22, 1936.

Columbia Oil & Gasoline Corporation, 61 Broadway, New
York, N. Y.

DEAR SIRs:

Under date of January 31, 1936, we entered into an agreement with you whereby we agreed to advance to you such sums of money as you would require to carry into effect [fol. 399] your obligations under your offer to the Receivers of Missouri-Kansas Pipe Line Company dated January 31, 1936.

We understand that you intend to modify your aforesaid offer in accordance with the agreement attached hereto. This is to inform you that our obligations will include an obligation to advance to you such sums as may be necessary to carry out your offer to the Receivers as modified in accordance with the agreement attached herewith.

Very truly yours, Columbia Gas & Electric Corporation,
by E. Reynolds, Jr., President.

April 22, 1936.

Columbia Oil & Gasoline Corporation and Columbia Gas &
Electric Corporation, 61 Broadway, New York, N. Y.
In re: Missouri-Kansas Pipe Line Company Receiver-
ship

DEAR SIRs:

We, the undersigned, Receivers of Missouri-Kansas Pipe Line Company, suggest that your offer to us dated January 31, 1936, as supplemented by your letter of March 5, 1936, filed in the Missouri-Kansas Pipe Line Company receiver-[fol. 400] ship proceedings, be modified in the following particulars and we hereby offer, in the event you agree to the following modifications, that we will present the offer as so modified to the Chancellor of the State of Delaware at the adjourned hearing now set for Thursday, April 23, 1936, and will recommend that he enter an order directing us to accept the offer as so modified. Subject to your acceptance and such approval by the Chancellor, we agree to carry into effect with you the offer as so modified:

The modifications are as follows:

1. That the Preferred Stock of Panhandle Eastern Pipe Line Company, as described in your letter of January 31, 1936, be changed in the following respects:

(a) The provision for the convertibility of each share of Preferred Stock into 4 shares of Common Stock at any time up to the date of redemption be eliminated;

(b) The provision giving the Preferred Stock voting rights for the election of directors be eliminated and there be substituted in lieu thereof the following arrangement:

Of the 110,000 shares of Preferred Stock mentioned in your letter of January 31, 1936, 10,000 shares be set apart and designated as Class B. Preferred Stock and the same be non-redeemable, non-convertible and non-participating in earnings except that such 10,000 shares shall bear a dividend provision identical with the dividend provisions provided for in your letter of January 31, 1936, and that said 10,000 shares of Class B Preferred Stock be entitled to elect as a class two of the nine directors to the Board of Panhandle Eastern Pipe Line Company. The balance of the directors, seven in number, shall be elected by the common stock and said stock shall have cumulative voting rights;

(c) The balance of the 110,000 shares of Preferred Stock mentioned in your letter of January 31, 1936, other than the shares to be set apart as a Class B. Preferred Stock, as mentioned in subparagraph (b) above, consisting of 100,000 shares of Preferred Stock, be designated Class A Preferred Stock and until redeemed shall be entitled to participate in earnings of Panhandle Eastern Pipe Line Company upon the following basis:

When in any year the preferred dividends plus any and all accumulations on both the Class A and the Class B Preferred Stock outstanding have been declared and paid and a dividend has been declared and paid upon the Common Stock at the rate of \$1.50 per share, any further dividends declared and paid in any such year shall be shared by the Class A Preferred Stock and the Common Stock by classes in the ratio of 25% thereof to the Class A Preferred Stock and 75% thereof to the Common Stock so long as the 100,000 shares of Class A Preferred Stock are outstanding. In the

event that the Class A Preferred Stock is redeemed in part the percentage of participation of the remaining Class A Preferred Stock outstanding shall be in such proportion of 25% as such number of shares outstanding bears to 100,000 and upon said percentage (25%) being reduced through part of the Class A Preferred Stock being redeemed, the percentage otherwise payable to the Common Stock (75%) would be accordingly increased;

[fol. 402] (d) Said Class A Preferred Stock shall be redeemable at any time in whole or in part at par plus accrued dividends on or before July 1, 1941; after July 1, 1941, said Class A Preferred Stock shall be redeemable at any time in whole or in part at 110% plus accrued dividends. However, at any and all times the premium of 10% on such stock shall be waived upon any redemption from time to time out of earnings of the Corporation of any part of said Class A Preferred Stock then owned, held or controlled by Columbia Oil & Gasoline Corporation or Columbia Gas & Electric Corporation.

(e) Except as above stated, the Class A and Class B Preferred Stock shall contain identical provisions which shall be substantially those now stated in the Certificate of Incorporation.

2. The 80,000 shares of Common Stock which the offer of January 31, 1936 contemplates shall first be tendered to stockholders of Missouri-Kansas Pipe Line Company and thereafter taken up by Columbia Oil & Gasoline Corporation to the extent not purchased by said stockholders shall be tendered to said stockholders as provided in the offer of January 31, 1936, as modified by the letter of Gano Dunn, Trustee, dated February 28, 1936, attached to your letter of March 5, 1936, and to the extent Missouri-Kansas Pipe Line Company stockholders do not exercise their rights to subscribe the same shall be subscribed by Columbia Oil & Gasoline Corporation, and to the extent Columbia Oil & Gasoline Corporation subscribes for said shares and purchases the same Missouri-Kansas Pipe Line Company or any new corporation taking over its assets under any plan of reorganization or readjustment or reclassification of its [fol. 403] stock shall have the right to purchase said shares at \$25 per share plus interest at the rate of 6% per annum from the date of purchase by Columbia Oil & Gasoline Cor-

poration to the date of such purchase from Columbia Oil & Gasoline Corporation during a period of six months after the discharge of the undersigned as Receivers of Missouri-Kansas Pipe Line Company and the termination of the receivership estate, except that in no event shall such right continue after the 31st day of December, 1937. In your offer of January 31, 1936 you have the following statement:

"The stock would be offered by Panhandle Eastern for subscription, pro rata to the holders of its Common Stock, subscription rights issued to you as Receivers or to Missouri-Kansas to be distributed pro rata (according to the total number of votes represented by the outstanding stock) to the stockholders of Missouri-Kansas who satisfactorily establish that they are such stockholders, and to be exercisable only by such stockholders or their respective assignees."

This should be changed to read as follows:

The stock would be offered by Panhandle Eastern for subscription, pro rata to the holders of its Common Stock, subscription rights issued to you as Receivers or to Missouri-Kansas to be distributed pro rata among the holders of your Common Stock and Class B Stock in proportion to the relative dividend and liquidation provisions of said classes of stock, namely, each Class B share would be entitled to one-twentieth of the right which would be accorded each share of the Common Stock. Such distribution to be made to the stockholders of Missouri-Kansas who satisfactorily establish that they are such stockholders and said [fol. 404] rights to be exercisable only by such stockholders or their respective assignees.

3. The September 17, 1930 contract shall be canceled as provided in your offer of January 31, 1936 without prejudice, however, to Missouri-Kansas Pipe Line Company or its Receivers to enter into any contract or contracts with Panhandle Eastern Pipe Line Company for the purchase of gas which the Board of Directors of Panhandle Eastern Pipe Line Company agree upon and the releases to be given to you pursuant to your offer shall include all rights of Panhandle Eastern Pipe Line Company and its stockholders, you and we cooperating as the owners of its entire stock to authorize the same.

4. The provisions in the offer of January 31, 1936, with respect to the amount of cash which the undersigned shall receive, be changed as follows:

(a) The payment of \$300,000 presently provided for, remains;

(b) Columbia Oil & Gasoline Corporation shall purchase from the Receivers at \$25 per share up to 40,000 shares of Panhandle Eastern Pipe Line Company Common Stock which the Receivers will obtain under the offer, provided, however, that at least such number of shares be first offered to the present stockholders of Missouri-Kansas Pipe Line Company for purchase by them at \$25 per share, in addition to, at the same time and in the same manner, as the 80,000 shares referred to in Paragraph 2 above. The obligation of Columbia Oil & Gasoline Corporation shall be to purchase only such portion as shall not be taken by the stockholders after such offering, but the money provided by Columbia Oil & Gasoline Corporation shall be used only [fol. 405] for the purpose of paying claims adjudicated in the receivership proceedings and administration fees and expenses allowed by the Chancellor. Money raised from other sources or from stockholders may be used for other purposes. To the extent there would not be needed for said purposes the full \$1,000,000 which would be so provided by Columbia Oil & Gasoline Corporation if it purchased 40,000 shares of the Panhandle Eastern stock at \$25 per share, Columbia Oil & Gasoline Corporation shall not be called upon to make such purchase. In the event Columbia Oil & Gasoline Corporation is called upon to purchase any part or all of the 40,000 shares, Missouri-Kansas Pipe Line Company or any new company taking over its assets under a plan of reorganization, readjustment or reclassification, shall be given a right within a period of six months after the discharge of the undersigned as Receivers of Missouri-Kansas Pipe Line Company and the termination of the receivership estate to repurchase said shares at \$25 per share plus interest at the rate of 6% per annum from the date of purchase by Columbia Oil & Gasoline Corporation to the date of such purchase from Columbia Oil & Gasoline Corporation, which right shall in no event extend beyond the 31st day of December, 1937.

(c) In the event the Chancellor of the State of Delaware shall request an extension of the offer beyond May 1, 1936,

you will be willing to extend it for his convenience until the 10th day of May, 1936.

[fol. 406] 5. Except as the modifications suggested in this letter make changes in the offer of January 31, 1936, all of its terms and provisions shall remain unaltered.

C. Ray Phillips, Henry T. Bush, as Receivers of Missouri-Kansas Pipe Line Company.

We hereby agree to the modification set forth above.
Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President. Columbia Gas & Electric Corporation, by E. Reynolds, Jr., President.

* * * * *

[fol. 407] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL COMPLAINT—Filed January 12, 1939

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, files this supplemental complaint, to obtain such further relief in this action, in accordance with Section V of the decree entered herein January 29, 1936, as is necessary for the purpose of giving full effect to said decree and for the carrying out thereof.

I

Summary of Relevant Provisions of the Decree of January 29, 1936

1. Description of the corporate defendants and Panhandle Eastern Pipe Line Company. In section I of the decree of January 29, 1936, the defendant Columbia Gas and Electric Corporation, hereinafter referred to as "Columbia Gas", the defendant Columbia Oil and Gasoline Corporation, hereinafter referred to as "Columbia Oil", and Panhandle Eastern Pipe Line Company, hereinafter referred to as "Panhandle Eastern", are described as follows:

Columbia Gas, a Delaware corporation, is a holding company owning more than fifty subsidiary companies. A substantial part of the business of said enterprise is the pro-

duction, transmission, distribution and sale of natural and artificial gas.

Columbia Oil, a Delaware corporation, was organized to hold and operate oil and gasoline properties formerly owned by Columbia Gas. Columbia Oil has not been and is not now engaged in the business of producing, transmitting, [fol. 408] distributing and selling natural gas except that it owns certain securities of Panhandle Eastern, and all the outstanding capital stock and certain indebtedness of Indiana Gas Transmission Corporation.

Panhandle Eastern, a Delaware corporation, owns and controls large gas-producing areas in the Texas Panhandle and in Kansas, and has constructed a natural gas pipe line which extends from these producing areas through the states of Oklahoma, Kansas, Missouri and Illinois, and touches upon Indiana, for the purpose of transmitting, distributing and selling such natural gas.

2. Restrictions upon Columbia Gas and Columbia Oil. By section II of said decree, Columbia Gas and Columbia Oil were perpetually enjoined from exercising, or attempting, individually or collectively, directly or indirectly, to exercise, any dominion or control over Panhandle Eastern, and from restraining, or interfering in any manner with, the free and independent action of Panhandle Eastern in the production, transportation, sale or delivery of natural gas to any person, corporation, community or section of the United States. They were likewise enjoined from holding, acquiring, voting or in any manner acting as the owners, directly or indirectly, of the whole or any part of the stock, or other share capital, or bonds, property or assets, of Panhandle Eastern or any other company, corporation, association or organization owning any substantial amount of the securities of Panhandle Eastern. They were likewise enjoined from participating in any way, directly or indirectly, and from exercising any control, direction, supervision, or influence, in the management or control of Panhandle Eastern. To these prohibitions, the following exceptions were made:

(a) Columbia Oil was permitted to own or acquire stock in or obligations of Panhandle Eastern, and to exercise voting rights appurtenant thereto; but Columbia Gas was enjoined from acquiring any interest in any such stock owned or acquired by Columbia Oil, whether by operation

of law, or through the enforcement of any lien arising from any indebtedness whatsoever of Columbia Oil to Columbia Gas, or otherwise.

(b) Columbia Gas was permitted to own stock in and obligations of Columbia Oil.

(c) Columbia Gas was permitted to own or acquire obligations, without any existing or potential voting rights, of Panhandle Eastern; but Columbia Gas was enjoined from acquiring any of the pipe line or other physical assets of Panhandle Eastern in connection with the enforcement of any rights under obligations of Panhandle Eastern owned or acquired by it.

(d) It was provided that when Columbia Gas shall have effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by no longer owning stock of any class having present or potential voting rights in Columbia Oil, Columbia Oil, upon the approval of this Court, shall no longer be subject to the restrictions set forth in section II of said decree.

The foregoing restrictions upon Columbia Gas and Columbia Oil were, by section I of said decree, likewise made applicable to all persons claiming or assuming to act or on behalf of either of said corporations; to any successors or assigns of either of said corporations; to any persons who might, directly or indirectly, acquire ownership or control of the property, business or assets of either of said corporations; and to the taking of any prohibited action by indirection or by or through any subsidiaries, affiliates, officers, [fol. 410] directors, shareholders, agents, receivers, trustees, attorneys, employees, or otherwise.

3. The Voting Trust. By section III of said decree, Gano Dunn was constituted trustee for the purposes and with the powers and duties hereinafter summarized. It was provided that within ten days following the entry of said decree, Columbia Oil should transfer to said trustee all stock carrying present or potential voting rights then owned by it in Panhandle Eastern, and that any stock which might thereafter be acquired by Columbia Oil should likewise be promptly transferred to said trustee.

Under section III of said decree, the trustee holds legal title to such stock and exercises all rights and privileges incident thereto, upon the following terms and conditions:

(a) It was made his duty to vote such stock for the election of as many directors of Panhandle Eastern as such stock might be entitled to elect. One of the directors thus elected must be the trustee himself. The remainder must be selected from among persons recommended by Columbia Oil.

(b) It was made his duty to vote such stock upon all other questions and matters in respect of which such stock was entitled to vote, as directed by Columbia Oil, except insofar as such directions might be inconsistent with the purposes of said decree.

(c) It was provided that he would receive reasonable compensation, in an amount, not less than \$15,000 per annum, to be approved by this Court, and that he would be reimbursed for any expenses incurred by him in the performance of his duties as such trustee. Such compensation was made payable in equal shares by Columbia Oil and Columbia Gas.

[fol. 411] (d) He was likewise made subject to certain other duties supplementary to those described in paragraphs (a), (b) and (c), above.

4. The declared purposes of the decree.

(a) Principal purpose. In the fourth paragraph of the preamble to said decree, it was explicitly set forth that "provision against domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas and Electric Corporation and the Maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others," constituted the proper basis for the entry of the decree.

(b) Subsidiary purposes. To effectuate this principal purpose of securing a position of free and independent action for Panhandle Eastern, the voting trust described hereinabove was set up as an interim device, and it was provided, in the last paragraph of section III of said decree, that the voting trust would be terminated with the approval of this Court "when (1) Columbia Gas has effectively divested itself of all control, direct or indirect, legal

or practical, of Panhandle Eastern by (a) no longer owning stock of any class having present or potential voting rights in Columbia Oil or (b) by Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern; or when (2) under the circumstances then existing, the continuation of said trust is no longer essential or necessary in carrying out the purposes of this decree;".

II

Developments Since Entry of the Decree of January 29, 1936

1. Security holdings of Columbia Oil in Panhandle Eastern, and of Columbia Gas in Columbia Oil. The allegations which follow in this subsection 1 are made upon information and belief.

(a) Columbia Oil now is the beneficial owner of 404,326 shares of common stock in Panhandle Eastern, representing a majority of the 728,652 shares issued and outstanding; \$10,000,000 par value of Class A preferred stock of Panhandle Eastern; and \$1,000,000 par value, being the entire issue, of Class B preferred stock of Panhandle Eastern. The Class B preferred is non-callable, and entitles the holders thereof (as a class) to elect two directors to the board of directors of Panhandle Eastern. Thus, the common stock and the Class B preferred stock beneficially owned by Columbia Oil elect six of the nine directors of Panhandle Eastern. Out of these six directors, however, one must be the voting trustee.

The remaining 324,326 shares of the outstanding common stock of Panhandle Eastern are held by Missouri-Kansas Pipe Line Company, hereinafter referred to as "Mokan", a Delaware corporation. These 324,326 shares were acquired by Mokan under the terms of a settlement agreement provided for in section V of the stipulation filed in connection with said decree of January 29, 1936, made and entered into by and between Columbia Gas and Columbia Oil on the one hand and the receivers of Mokan appointed by the Chancery Court of the State of Delaware on the other, and approved by said Court on the 29th day of April, 1936. Mokan also owns a warrant entitling it to purchase an additional 80,000 shares of the common stock of Panhandle Eastern at \$25.00 per share. In the said settlement agreement between Columbia Gas and Columbia

Oil and the receivers of Mokon, Columbia Gas and Columbia Oil required said receivers to agree to distribute said warrant (or the stock represented thereby) pro rata among [fol. 413] the stockholders of Mokon, and Columbia Oil agreed to purchase from Panhandle Eastern any part of said warrant (or the shares represented thereby) not subscribed for by the stockholders of Mokon, thereby increasing the proportionate holdings of Columbia Oil in the common stock of Panhandle Eastern.

(b.) Columbia Gas owns 400,000 shares, being the entire amount issued and outstanding, of preferred stock of Columbia Oil. Such stock, as long as owned by Columbia Gas, carries with it the right to elect the largest number of directors constituting a minority of the board of directors of Columbia Oil. In addition, Columbia Gas owns the entire funded debt of Columbia Oil, in a total face amount of approximately \$23,000,000.

Prior to the entry of the decree of January 29, 1936, all of the common stock of Columbia Oil was deposited in a voting trust, against which voting trust certificates had been issued and were held by the holders of the common stock of Columbia Gas. Following the entry of said decree, this voting trust was dissolved, and the common stock of Columbia Oil was distributed, on a pro rata basis, to the common stockholders of Columbia Gas. Although the common stock of Columbia Oil is now listed, and from time to time traded in, upon the New York Curb Exchange, the common stockholders of Columbia Gas and the common stockholders of Columbia Oil have remained and now are substantially identical. In the election of directors of Columbia Oil, the common stockholders of Columbia Oil enjoy the right of cumulative voting.

The largest single common stockholder of Columbia Gas is New York United Corporation, a New York corporation, which is a wholly owned subsidiary of United Corporation, [fol. 414] a Delaware corporation. New York United Corporation owns approximately 20% of the outstanding voting securities of Columbia Gas.

2. The voting trust. Early in February 1936, shortly after the entry of the decree of January 29, 1936, Columbia Oil, in accordance with the terms of the decree, transferred all of the stock of Panhandle Eastern owned by it to Gano Dunn, as trustee. Gano Dunn, as trustee, has held all

stock of Panhandle Eastern beneficially owned by Columbia Oil continuously since that date and now holds such stock. Soon after the creation of the voting trust, Gano Dunn was elected a director of Panhandle Eastern, in accordance with the decree of January 29, 1936, and he has served as such director continuously since that time. He has participated actively in the management of Panhandle Eastern. He receives compensation in the amount of \$22,500 per annum, paid in equal parts by Columbia Gas and Columbia Oil.

3. Necessity for further action by this Court to achieve the purposes of the decree.

(a) In the period of almost three years which has elapsed since the entry of the decree of January 29, 1936, no steps of any kind have been taken toward the effective termination of all control by Columbia Gas of Panhandle Eastern, whether by Columbia Gas' disposing of all stock of any class having present or potential voting rights in Columbia Oil, or by Columbia Oil's divesting itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of such decree.

(b) Although it is the expressly declared purpose of said decree to restore Panhandle Eastern to, and to maintain Panhandle Eastern in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, and although the last paragraph of section III of such decree contemplates that this purpose shall be achieved through Columbia Gas' disposing of all stock of any class having present or potential voting rights in Columbia Oil, or by Columbia Oil's divesting itself of ownership of all stock of Panhandle Eastern, the decree, in its present form, does not provide for any particular method or procedure for such divestiture. The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle

Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture.

III

Wherefore, plaintiff prays:

A. That this honorable Court exercise the jurisdiction retained by it in section V of said decree of January 29, 1936 for the purposes therein stated, to wit, to give full effect to said decree and to make such other and further orders and decrees and to take such action as may be necessary to the carrying out thereof, and enter a judgment herein to the following effect:

[fol. 416] 1. Adjudging that, in order to achieve the declared primary purpose of said decree of January 29, 1936, namely, to restore Panhandle Eastern to, and maintain Panhandle Eastern in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, it is necessary to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern.

2. Adjudging that plaintiff has the right to such further relief in this action as may be necessary to give full effect to said decree of January 29, 1936, and to carry out the purposes thereof.

3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, either by disposing of all interest which it may have in any stock of any class having present or potential voting rights in Columbia Oil, or by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern; and, to that end:

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this Court for approval, through

the trustee for sale constituted in accordance with subsection 5 of this section III, a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this Court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a) of this subsection 4, a plan for the sale [fol. 417] or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Re-constituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, with the powers and duties, and subject to the conditions, set forth in said decree of January 29, 1936, and with the further duties of (1) formulating and submitting to this Court for approval a plan for the sale or other disposition by Columbia Oil of all interest which it may have in any stock of Panhandle Eastern, (2) receiving, examining and transmitting to this Court with a recommendation for approval or disapproval, any offer which may be submitted by any person for the purchase of any securities in which Columbia Oil may have an interest or of which Columbia Oil may be the issuer, and any plan submitted by Columbia Oil for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern, pursuant to paragraph (a) of subsection 4 of this section III, and (3) selling or otherwise disposing of such stock in accordance with such a plan or offer approved by this Court and in accordance with any further order of this Court relating thereto;

(b) To provide that the term of appointment of the person designated as said trustee for sale shall expire not later than two years from the date of entry of judgment herein, and that such person shall not be subject to reappointment as such trustee; and

(c) To empower said trustee to employ such accountants, engineers, appraisers or other technicians and experts as may be necessary to assist him in discharging his duties.

[fol. 418] B. That plaintiff have such other and further relief as to this Court may seem proper.

(Sgd.) Homer S. Cummings, Attorney General.
 (Sgd.) Thurman Arnold, Assistant Attorney General.
 (Sgd.) Wendell Berge, Special Assistant to the Attorney General.
 (Sgd.) Hugh B. Cox, Special Assistant to the Attorney General.
 (Sgd.) Milton Katz, Special Assistant to the Attorney General.
 (Sgd.) John J. Morris, Jr., United States Attorney for the District of Delaware.
 (Sgd.) John S. L. Yost, Special Assistant to the Attorney General.
 (Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

[fols. 419-420] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Titles omitted]

Motion of Missouri-Kansas Pipe Line Company for Leave to Intervene, Notice of Motion and Petition

[fols. 421-422] NOTICE OF MOTION FOR LEAVE TO INTERVENE

To the United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, George H. Howard, Phillip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay, and John H. Hillman, Jr.:

Please take notice, that by an order of this Court dated this day, the within motion of Missouri-Kansas Pipe Line Company for leave to intervene in this action and for other relief will be brought on for hearing on the 10th day of February, 1939, at 2 P. M., in the courtroom of this Court in the Post Office Building in the City of Wilmington, Delaware.

Dated, February 6th, 1939.

Biggs & Lynch, by Stewart Lynch, Solicitors for Petitioner.

[fol. 423] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE—Filed February 6, 1939

Missouri-Kansas Pipe Line Company, a corporation of the State of Delaware, by Biggs & Lynch, its attorneys, moves this Honorable Court for an order granting it leave to intervene in the above-entitled action and to file the annexed petition.

This motion is made upon all the pleadings and proceedings heretofore had herein, and upon the grounds more particularly set forth in the petition hereto annexed.

Wherefore, petitioner moves this Court for an order granting it leave to intervene in this proceeding and to file the annexed petition, and requiring the parties defendant respectively to answer or otherwise plead thereto, within twenty (20) days from the date of service, and for such other and further relief as may be just and proper.

Dated, February 6, 1939.

Biggs & Lynch, by Stewart Lynch, Solicitors for Petitioner.

[fol. 424] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENOR'S PETITION

To the Honorable Judge of the District Court of the United States for the District of Delaware:

The Petition of Missouri-Kansas Pipe Line Company, the above named Intervenor, respectfully shows to this Court and alleges:

I. Intervenor, Missouri-Kansas Pipe Line Company (hereinafter referred to as "Mokan"), is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

II. On March 6th, 1935, the above named Petitioner, United States of America (hereinafter referred to as "United States"), commenced this suit in equity against the above named defendants by the filing of a Petition

herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust Laws of the United States.

[fol. 425] III. Thereafter and on October 30th, 1935, United States filed an Amended and Supplemental Petition (hereinafter referred to as the "Amended Petition"). Reference is made to said Amended Petition and to the Exhibits annexed thereto as if herein fully and at length set forth.

IV. Said Amended Petition alleged among other things the following:

a. That all of the above named defendants had been and were "engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and to monopolize and attempt to monopolize such trade and commerce in said natural gas in the States of Indiana, Michigan, and Ohio" (Par. 17.)

b. That the defendant, Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas") was a holding company owning, controlling and dominating more than seventy subsidiaries (Par. 13); that Columbia Oil & Gasoline Corporation (hereinafter referred to as "Columbia Oil") was organized by Columbia Gas to hold the oil, gasoline and gas-producing properties of the Columbia System, that all of the first preferred and second preferred stock of Columbia Oil was owned by Columbia Gas, and that all of the common stock of Columbia Oil had been deposited under a Voting Trust Agreement (Par. 14), which was controlled by Columbia Gas (Par. 21). (Columbia Gas and Columbia Oil collectively will sometimes be referred to herein as "Columbia Companies").

c. That the field of operations of the Columbia Companies so far as the production, transmission and distribution of natural gas was concerned, extended throughout various States of the United States; that in a large portion of the State of Ohio, it had for many years past enjoyed a virtual monopoly in the sale and distribution of natural gas (Par. 15).

d. That Mogan had undertaken the construction of a large pipe line to transport natural gas from the Texas

Panhandle and Kansas into the States of Indiana, Michigan, Ohio and elsewhere, where Mogan planned to sell its natural gas; that for such purpose, Mogan caused the organization [fol. 426] of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and became the owner of the entire capital stock of that corporation (Par. 16); that the above named defendants then entered into a combination and conspiracy to monopolize trade and commerce in natural gas in the States of Indiana, Michigan and Ohio (Par. 17), and to prevent Mogan from constructing the said pipe line and, failing that, to obtain control of the management and operation of Panhandle Eastern.

e. That the specific purposes and objects of the said combination and conspiracy were as follows (Par. 17):

"To prevent, if possible, the construction of the natural-gas pipe line described in Article 16 hereof; and, failing that, to obtain control of the management and operation of said Panhandle Eastern Pipe Line Company and its subsidiaries, and, having obtained such control, so to conduct its activities and affairs as to (a) prevent said Missouri-Kansas Pipe Line Company from obtaining its requirements of natural gas from said Panhandle Eastern Pipe Line Company; (b) prevent said Panhandle Eastern Pipe Line Company from making available, either directly or indirectly, its large supplies of natural gas in such manner as to compete with the Columbia System or endanger its actual or contemplated monopoly in the distribution and sale of natural gas in said States of Indiana, Michigan, and Ohio; and finally (c) bring said Panhandle Eastern Pipe Line Company to such a financial condition that the corporate defendants herein might be enabled to acquire the complete domination and ownership of its physical assets and properties, either by foreclosure of the mortgage securing its bonded indebtedness or otherwise, as hereinafter more particularly described."

f. That the Columbia Companies, having failed in their attempts to prevent the construction of the Panhandle Eastern pipe line, thereupon by means of a contract dated September 17th, 1930, supplemented by a memorandum dated September 30th, 1930, providing for the purchase by Columbia Oil of a one-half interest in Panhandle Eastern, ob-

tained control of the management and operation of Panhandle Eastern (Pars. 20-23); that said contracts further provided that the Board of Directors of Panhandle Eastern was to consist of nine members, four of whom were to be nominated by the Columbia Companies, four by Moka and the remaining or ninth director to be the defendant, George [fol. 427] H. Howard, whom Moka was induced to accept as such ninth director because of representations by the defendants that said Howard would act impartially and in the best interests of Panhandle Eastern (Par. 21).

g. That the appointment of said George H. Howard as such ninth director was in reality brought about by the Columbia Companies in furtherance of said combination and conspiracy; that at the time of such selection said Howard was President of the United Corporation, which corporation was the largest stockholder of the defendant, Columbia Gas; and that the said Howard as such Director acted solely in the interest of the Columbia Companies for the purpose of effecting the objects of said combination and conspiracy (Par. 21).

h. That the Board of Directors of Panhandle Eastern, thus dominated by the Columbia Companies, including the said Howard, prevented Moka from obtaining natural gas from Panhandle Eastern, despite the fact that the Columbia Companies and Panhandle Eastern had agreed by contract to sell natural gas to Moka; that the Columbia Companies failed to purchase any gas from Panhandle Eastern, despite the fact that they had contracted to do so; and further failed and neglected opportunities to sell Panhandle Eastern gas to others, including the Cities of Indianapolis, Ind., Kansas City, Mo., St. Louis, Mo., Detroit, Mich., as a result of all of which Moka was forced into Receivership (Pars. 27, 31).

i. That after Moka had been forced into receivership by the illegal acts of the defendants, the defendants took such steps and proceedings as were intended to assure the acquisition by them of the fifty (50%) per cent of the common capital stock of Panhandle Eastern then held by the Receivers of Moka; that such conduct of the defendants was in furtherance of the combination and conspiracy and was intended to cause Panhandle Eastern Pipe Line Company to be wholly absorbed by the Columbia Companies, thus

assuring to such Companies a monopoly in natural gas in the potential markets of Indiana and Michigan (Pars. 27-32).

V. The Amended Petition prayed for a Decree adjudging (1) that the acquisition by the Columbia Companies of fifty (50%) per cent of the capital stock of Panhandle Eastern [fol. 428] was in violation of the Anti-Trust Laws; (2) that the proposed acquisition by the defendants of the remaining fifty (50%) per cent of the outstanding capital stock of Panhandle Eastern be restrained as a further violation of the Anti-Trust Laws; (3) that the defendants be enjoined from further engaging in said combination and conspiracy, from employing any of the means described in said Amended Petition for effectuating the said conspiracy, from exercising any dominion or control over Panhandle Eastern, and from restraining or interfering with the free and independent action of Panhandle Eastern in any section or community in the United States; (4) that Columbia Oil be required to divest itself of all securities of Panhandle Eastern then owned or thereafter to be acquired by it; (5) that the defendants be enjoined from acquiring, receiving, holding, voting or in any manner acting as the owners of the whole or any part of the stock or other securities or assets of Panhandle Eastern.

VI. Thereafter and on the 29th day of January, 1936, a stipulation was duly entered into between the Petitioner and all of the defendants, consenting to the entry of a Decree against said defendants.

VII. On the said 29th day of January, 1936, a Decree, to which was attached as a part thereof the aforesaid stipulation, was duly made and entered in this Court against all of the defendants.

VIII. Said Decree contained, among others, the following recitals:

"And it appearing that the Petitioner (United States of America) alleges that the defendant Columbia Gas & Electric Corporation, through ownership by its affiliate Columbia Oil & Gasoline Corporation of various securities of Panhandle Eastern Pipe Line Company and otherwise, has interfered with, dominated and controlled the management and operation of said Panhandle Eastern Pipe Line Com-

pany with the purpose and effect of preventing competition, actual and potential, between said Panhandle Eastern Pipe Line Company and said Columbia Gas & Electric Corporation, and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States.

"And it further appearing from said stipulation that the Petitioner (United States of America) and the defendants have agreed that provision against domination or control, [fol. 429] direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation and the maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others constitutes the proper basis for the entry of this decree;"

and decreed, among other things, as follows:

"That the defendants be and they are hereby perpetually enjoined from exercising, or attempting, individually or collectively, directly or indirectly, to exercise any dominion or control over Panhandle Eastern and from restraining, or interfering in any manner with, the free and independent action of said Panhandle Eastern in the production, transportation, sale or delivery of natural gas to any person, corporation, community or section of the United States; from holding, acquiring, voting or in any manner acting as the owners, directly or indirectly, of the whole or any part of the stock, or other share capital, or bonds, property or assets of Panhandle Eastern or any other company, corporation, association or organization owning any substantial amount of its securities; and from participating in any way, directly or indirectly, or from exercising any control, direction, supervision, or influence, in the management or control of Panhandle Eastern, except;

(a) That defendants may own stock in and obligations of Columbia Gas and Columbia Oil * * *;

(b) That defendants may own stock and obligations in Panhandle Corporation (a separate corporation from Panhandle Eastern) * * *;

(c) That Columbia Gas * * * may own or acquire obligations, without present or potential voting rights, of

said Panhandle Eastern, except that Columbia Gas is hereby enjoined and restrained in connection with enforcing any rights under said obligations with respect to principal, interest, or sinking fund, from acquiring any of the pipe line or other physical assets of Panhandle Eastern;

(d) That Columbia Oil may own or acquire stock or obligations in Panhandle Eastern and exercise voting rights appurtenant thereto * * * subject to the further terms and provisions of this decree, but Columbia Gas is hereby perpetually enjoined and restrained from acquiring any interest in such stock, by operation of law, or in connection [fol. 430] with enforcing any lien created through the present or future existence of any debt, whether funded or unfunded, of Columbia Oil to Columbia Gas, or otherwise;

(e) That, when Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by no longer owning stock of any class having present or potential voting rights in Columbia Oil, upon the approval of this Court Columbia Oil shall no longer be subject to the restrictive clauses of this Section II;"

On Information and Belief:

IX. Notwithstanding the provisions of said Decree, and in violation thereof, the defendants have continued and are continuing their conspiracy and plan to eliminate Panhandle Eastern from competition in the natural gas industry within the States of Indiana, Michigan, and Ohio,—these being the "certain sections" referred to in the recital of the Decree, above quoted; that the defendants have carried out or attempted to carry out the purposes and objects of said conspiracy and plan by employing, commencing with January 31st, 1936—two days after the entry of said Decree,—the following means:

A. Preventing Panhandle Eastern from owning or controlling any extension of the Panhandle Eastern line east of the Indiana-Illinois line, and to that end by Columbia Gas acquiring for itself full ownership of the extension to Detroit, which passes through the States of Indiana, Ohio and Michigan, and obtaining thereby and by other means a growing monopoly of the distribution and marketing of natural gas in said area;

B. Causing to be created and then acquiring through Columbia Oil, all of a \$1,000,000 issue of Class B preferred stock of Panhandle Eastern, which is not subject to be retired and carries the exclusive right to elect two of Panhandle Eastern's nine directors, thereby perpetuating control of Panhandle Eastern;

C. Acquiring (directly by Columbia Oil and indirectly by Columbia Gas) a majority of the common stock of Panhandle Eastern in connection with the Detroit financing;

D. Exercising and attempting to exercise control, direction, supervision and influence in the management and control of Panhandle Eastern; and employing or causing to be [fol. 431] employed by Panhandle Eastern executive officers of the defendants' choosing, including both of the persons who have since the said Decree occupied the office of President of Panhandle Eastern;

and also by other methods, manner and means as hereinafter set forth. The defendants Hillman and Bay participated in some, but not all of the acts herein set forth.

X. After the commencement of this suit and on August 31, 1935, prior to the making and entry of the aforesaid Decree, Panhandle Eastern, which was then completely under the control of the defendants, had entered into an agreement with Detroit City Gas Company, (hereinafter sometimes referred to as the "Detroit Contract") by the terms of which Panhandle Eastern agreed to supply natural gas to the City of Detroit for a period of fifteen years.

XI. At the time the said Detroit Contract was entered into, as well as at the time the said Decree was made and entered herein, the eastern terminus of the Panhandle Eastern natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana state boundary line, which point is indicated on a map annexed hereto, made a part hereof and marked "Exhibit A"; that at said times there was no pipe line connection between the said eastern terminus of the Panhandle Eastern pipe line at Dana, Indiana, and the City of Detroit, Michigan, a distance of more than three hundred miles. Said map shows the Panhandle Eastern Pipe Line and the Columbia System as they existed prior to the commencement of this suit.

XII. The said Detroit Contract contained, among other things, provision for (a) the construction by Panhandle Eastern of a pipe line extension from the eastern terminus of the then existing Panhandle Eastern pipe line to the City of Detroit (hereinafter sometimes referred to as the "Detroit extension"), (b) the reinforcement of the existing pipe line, and (c) the financing of said construction and reinforcement, in terms and words as follows:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

XIII. The right of Panhandle Eastern to construct, own and operate the said extension as provided for in said Detroit Contract was a valuable asset of, and constituted property belonging to, Panhandle Eastern.

XIV. Because of the existence of said contract, and contemplating the construction of said extension, the Decree of this Court (paragraph IV) provided for alternate methods of financing, and further provided that if the Detroit extension and the necessary reinforcement to the main line

of Panhandle Eastern were constructed with financial assistance secured from Columbia Gas, such

"financial assistance (must be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment;"

XV. Notwithstanding said Decree and the further provision therein contained that the defendants were perpetually enjoined from acquiring, directly or indirectly, the whole or any part of the property or assets of Pan-[fol. 433] handle Eastern, two days after the entry of said Decree, namely, on January 31, 1936, defendant Columbia Gas, for its own use and benefit, directly acquired from Panhandle Eastern that part of the contract under which Panhandle Eastern owned the right to construct, own and operate the extension from the eastern terminus of the Panhandle Eastern line to the City of Detroit, and by means of its complete control of the Board of Directors of Panhandle Eastern caused the necessary corporate action to be taken to permit such acquisition. Said corporate action was taken before Gano Dunn, Trustee appointed by and under the decree herein had qualified and taken office and before Mogan was represented on the Board of Panhandle Eastern, and was taken at directors' meetings superintended by Charles A. Munroe, one of the defendants above named. Through its wholly owned subsidiary Michigan Gas Transmission Company, Columbia Gas has constructed and now owns and operates said extension, and has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the Decree aforesaid.

XVI. By reason of its ownership and operation of said Detroit extension, Columbia Gas has been enabled to take over, dominate and control the markets available to said Detroit extension in Indiana and southeastern Michigan (except Detroit) and to prevent Panhandle Eastern from entering into competition in the said markets or in the Ohio markets of the Columbia companies adjacent to said extension; that the map which is hereto annexed and marked

Exhibit B shows the territory in and about the State of Indiana with the pipe lines of Panhandle Eastern and of the Columbia System as they existed prior to the commencement of this suit. The attached map which is marked Exhibit C shows the same territory and the said lines as they existed on January 29, 1936, the date of the Consent Decree herein; and the attached map which is marked Exhibit D shows the location of the said Detroit extension, together with various laterals therefrom which Columbia Gas has constructed to connect with existing artificial and mixed gas lines which are also shown on said map, such extension of the Columbia System having occurred since the entry of the Decree herein and in order that Columbia Gas might control the markets in the aforesaid territory and enlarge its monopoly so as to include said Indiana and Michigan territory; that the City of Toledo, in the State of Ohio, is [fol. 434] twelve miles east of the Detroit extension as shown on said map, and is served by Columbia Gas from its Ohio system; that by owning and operating said Detroit extension, Columbia Gas has prevented Panhandle Eastern from competing in the Toledo market, as well as in the other markets in the territory available to said extension. Under the terms of a contract between Michigan Gas Transmission Corporation and Panhandle Eastern, approved by the Trustee herein, and by the Columbia-dominated Board of Panhandle Eastern, allocation is made of the prices received from the City of Detroit so that an unfair and unreasonable part thereof is paid to and retained by Michigan Gas Transmission Corporation, all to the detriment of Panhandle Eastern, Mokon, and the public.

XVII. The aforesaid Decree provided (Section IV) that:

“financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter”;

that the defendants, in violation of the intent of said provisions contained in the said Decree, refused to make available to Mokon or to underwriters who desired to bid on said financing, the necessary financial and other data affecting Panhandle Eastern, or to allow time for the preparation

of a proposal, thus preventing the making of any alternative proposal for the financing of the construction of said extension by Panhandle Eastern, although Panhandle Eastern, if it had not been prevented by the defendants, could itself have readily procured the financing of said extension.

XVIII. In addition to the moneys required for the construction of the aforesaid extension, Panhandle Eastern, for the fulfillment of said Detroit contract, required further moneys for the reinforcement of its own line. The Decree of this Court expressly provided that if such financial assistance were procured from Columbia Gas, it must be furnished, as hereinabove set forth, only upon terms which did not "in any way *directly or indirectly, presently or potentially* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle [fol. 435] Eastern." Columbia Gas evaded said express provision by causing its controlled affiliate, Columbia Oil, to acquire an additional 80,000 shares of the common stock of Panhandle Eastern shortly after the entry of the said Consent Decree with moneys advanced by Columbia Gas, namely, the sum of \$2,000,000, which Columbia Gas advanced to Columbia Oil for the express purpose of enabling the latter to make such payment and to acquire such stock. Said funds when received by Panhandle Eastern were used by it for the said reinforcement of its said line. Such purchase of additional stock gave to Columbia Oil a majority of the common stock of Panhandle Eastern then outstanding, and Columbia Oil still owns such majority, and still owes Columbia Gas said \$2,000,000.

Your petitioner avers that while Columbia Oil was and is permitted, under the Decree of this Court, to acquire stock in Panhandle Eastern, such permission was made expressly subject to the further terms of said Decree, including the injunction against acquisition by Columbia Gas of any interest in Panhandle Eastern. Your petitioner further avers that the device herein set out was intended to evade the restraint imposed on Columbia Gas by said Decree, and to enable Columbia Gas to acquire a potential or indirect interest in stock of Panhandle Eastern having voting rights, and substantial control thereof, all in violation of the express terms of the Decree of this Court.

In order that Columbia Oil should retain a majority of the common capital stock of Panhandle Eastern and that

Mokan should not acquire for itself an 80,000 additional shares allocable to Mokan under the laws of the State of Delaware, and in order that Mokan's holdings of common stock of Panhandle Eastern should be less than those of the Columbia Companies, the Columbia Companies demanded and required that said Receivers enter into an agreement to distribute warrants to purchase the 80,000 shares of Panhandle Eastern stock allocable to Mokan to the stockholders of Mokan and to agree that Columbia Oil should be permitted to exercise such warrants as were not exercised by the stockholders of Mokan, and Columbia Oil refused to enter into any agreement with the Receivers which would provide that the Mokan or its Receivers should acquire the said 80,000 shares; that the provisions to that effect contained in the contract between Columbia Gas, Columbia Oil and the Receivers of Mokan, dated June 1st, 1936, are as follows (paragraph III, subdivision (e)):

[fol. 436] "That, when Mo-Kan as a stockholder of Eastern, or the Receivers in its behalf, receive the warrants evidencing rights to subscribe to the 80,000 shares of Common Stock of Eastern, referred to in Subdivision (e) of Article I of this Agreement, Mo-Kan will distribute, or the Receivers will distribute on behalf of Mo-Kan, to such persons as shall present for appropriate notation thereon certificates for Capital Stock of Mo-Kan (which certificate shall either be registered in the names of the persons so presenting them or be duly endorsed and stamped for transfer to such persons) such warrants pro rata except that each Class B share shall be entitled to one-twentieth of the right accorded each share of the Common Stock. That such rights shall not be exercisable by the Receivers or by Mo-Kan but only by the stockholders of Mo-Kan to whom they shall have been distributed or their assignees as above provided, and that all warrants so received by Mo-Kan or the Receivers which shall not have been so distributed shall be allowed to lapse."

and

"That it (Columbia Oil) will, with the cooperation of the Receivers, cause Eastern to deliver to the Receivers, when requested by them, on such reasonable notice as shall suffice for preparation and printing, in order that they may distribute the same to the stockholders of Mo-Kan, as herein-

after provided, transferable subscription warrants evidencing the subscription rights referred to in the foregoing Subdivision (b) of this Article I. That it will purchase any shares not so subscribed for by said stockholders at the price of \$25 per share." (Par. I, subd. (c).);

that thereby Columbia Gas attempted to insure its control and domination of Panhandle Eastern through its control of Columbia Oil.

XIX. Columbia Oil was incorporated on May 14, 1930 for the purpose of taking over the oil and gasoline properties of Columbia Gas and its subsidiaries, and in consideration of the transfer of such properties to Columbia Oil, Columbia Oil issued to Columbia Gas 337,500 shares of \$6.00 first preferred stock, 337,500 shares of \$6.00 second preferred stock, and 2,340,655 shares of common stock without par value.

The said common stock was put in a voting trust under which Voting Trust Certificates were issued to the holders of common stock of Columbia Gas in the ratio of one share [fol. 437] of stock of Columbia Oil for every five shares of stock of Columbia Gas. Columbia Gas at all times controlled the Voting Trustees of said Voting Trust. As of January 1, 1936 there were outstanding Voting Trust Certificates representing 2,336,826 shares.

Prior to January, 1936 Columbia Gas advanced an aggregate of \$32,232,652.24 to Columbia Oil to enable Columbia Oil to acquire securities of Panhandle Eastern, for which advances Columbia Gas held on January 1, 1936 6% demand notes of Columbia Oil secured by a pledge of all the securities of Panhandle Eastern owned by Columbia Oil, and in addition thereto Columbia Gas advanced to Columbia Oil prior to said date the further sum of \$1,892,071.75 to enable Columbia Oil to acquire stock and notes of Indiana Gas Transmission Company, for which advances Columbia Gas held on January 1, 1936 6% one-year notes (renewed from year to year) of Columbia Oil, secured by a pledge of all the securities of Indiana Gas Transmission Company owned by Columbia Oil. Said Indiana Gas Transmission Company owned the pipe line shown in green on the map which is hereto attached as Exhibit C.

Following the entry of the consent decree herein, and in purported compliance therewith, Columbia Gas caused its

subsidiary Columbia Oil to be recapitalized. Pursuant to such recapitalization the following changes were effected:

(a) As of January 31, 1936, Columbia Oil sold the stock and notes of Indiana Gas Transmission Corporation to Columbia Gas in satisfaction of the \$1,892,071.75 of one-year promissory notes. Indiana Gas Transmission Company was subsequently absorbed by Michigan Gas Transmission Corporation, a wholly owned subsidiary of Columbia Gas which was created by Columbia Gas to own and operate its new acquisitions in Indiana and Michigan.

(b) Columbia Oil created an issue of Twenty-Year Debentures, Maturing February 1, 1956, bearing interest at varying rates, beginning at 3% and increasing to 6% per annum after February 1, 1940, and limited to an aggregate principal amount of \$30,000,000.

(c) The \$32,232,652.24 secured demand indebtedness of Columbia Oil to Columbia Gas was liquidated as follows:

[fol. 438] Sale to Columbia Gas of \$14,574,500 principal amount of Panhandle Eastern Pipe Line Company 6% Mortgage Bonds . . .	\$14,574,500.00
Issuance of Twenty-Year Debentures at par . . .	17,658,000.00
Paid in cash	152.24
Total	\$32,232,652.24

(d) The Certificate of Incorporation of Columbia Oil was amended (a) to change the existing classes of First and Second Preferred Stock held by Columbia Gas (including all dividends in arrears thereon) into 400,000 shares of new Non-Cumulative Participating Preferred Stock of a single class, entitled to elect a minority of the directors, and (b) to give the Common Stock the right to elect, by cumulative voting, a majority of the directors. The exchange of Preferred Stocks was made on May 28, 1936.

The new preferred stock of Columbia Oil (which has ever since May 28, 1936 been held by Columbia Gas) bears preferential non-cumulative dividends at the rate of One dollar per share in 1938, the rate increasing fifty cents per share each year until 1946 when the rate becomes fixed at Five Dollars per share. It has first preference as to assets to the extent of One hundred and ten dollars per share, participates equally as a class with the common stock in

dividends, and after certain payments to the common stock participates in liquidation or in dissolution equally as a class with the common stock in the remaining assets.

The 3,829 shares of Common stock of Columbia Oil against which no Voting Trust Certificates were outstanding were cancelled, the voting trust was terminated in May, 1936 and the remaining common stock was distributed to the holders of Voting Trust Certificates.

Since the said recapitalization of Columbia Oil, Columbia Gas has advanced to it an additional sum of \$3,342,000 for which it has received additional Twenty-year Debentures, so that the total indebtedness of Columbia Oil to Columbia Gas is at present \$21,000,000. As of April 1, 1938 Columbia Gas was still obligated to advance to Columbia Oil an additional sum of \$942,000 in connection with the recapitalization and is further obligated to advance to Columbia Oil up to \$2,000,000 for the purpose of acquiring additional stock of Panhandle Eastern by exercising the above-mentioned warrant of Mokan to the extent the same is not exercised by Mokan stockholders, as stated in paragraph XVIII.

The Board of Directors of Columbia Oil on December 21, 1938, the time of the filing of the supplemental complaint hereafter referred to in Paragraph XXXV consisted of seven members. Three members were elected by the preferred stock held by Columbia Gas and four members by the common stock of Columbia Oil, the controlling stockholders of whom are substantially identical with the stockholders of Columbia Gas. The three directors of Columbia Oil who had been elected by Columbia Gas, and who were serving at the time of the said filing of the said supplemental complaint herein, were Walter C. Beckjord, director, vice-president, general manager and chairman of the Executive Committee of Columbia Gas, the defendant Edward Reynolds, president, director and a member of the Executive Committee of Columbia Gas, and Harry A. Wallace, vice-president and director of Columbia Gas. The remaining four directors of Columbia Oil who were serving at the said time of the filing of the supplemental complaint herein and who were elected by the management of Columbia Oil as holders of proxies from the common stockholders, were the following:

The defendant, Charles A. Munroe, who for many years and up to June 7, 1934 was director of Columbia Gas; Wil-

liam P. Philips, who had been for many years and was until 1930 a director of Columbia Gas; Don M. Wilson, who had prior thereto and until March 11, 1937 been an officer and director of various subsidiaries of Columbia Gas, and one William Falion.

In April of 1938 the defendant Phillip G. Gossler, Chairman of the Board of Columbia Gas, together with members of his immediate family, owned 5.3% of the common stock of Columbia Oil. Other officers, directors and employees of Columbia Gas held at said time approximately 4% of said common stock. United Corporation, a corporation of the State of Delaware, the largest single stockholder of Columbia Gas, owning 2,424,356 shares thereof, or about 19½% of the total outstanding stock of Columbia Gas, owned 84,769 shares of the common stock of Columbia Oil, representing 3.6% of the outstanding common stock. The President of said United Corporation was at the time of the commencement of this action and still is the defendant George H. Howard. The said Howard was also a director of Columbia Gas, but resigned after this suit was instituted. [fol. 440] Columbia Gas and Columbia Oil have had since 1930 and now have numerous intercorporate agreements relating to the interchange of gas and oil and other matters. Said corporations have offices on adjoining floors in the City of New York, N. Y., and in the same building in Wilmington, Delaware. The important executive positions in Columbia Oil are held by former executives of Columbia Gas. Columbia Gas and Columbia Oil are in effect identical in respect of management and control.

XX. On the date the aforesaid Decree was entered, the defendant Columbia Oil owned or controlled \$9,891,000 face amount of notes of Panhandle Eastern, which with accrued interest amounted to approximately \$10,700,000; that in order further to insure and perpetuate to themselves control of Panhandle Eastern, the Columbia Companies caused Panhandle Eastern in connection with said recapitalization thereof, to issue to defendant Columbia Oil two classes of preferred stock of the aggregate par value of \$11,000,000, of which \$10,000,000 was denominated as Class A participating preferred stock and was redeemable at par, and \$1,000,000 was denominated as Class B preferred stock; that said Class B preferred stock contained provisions granting the right to the holders thereof to elect as a class two directors

of Panhandle Eastern, and provided that such stock should not be subject to redemption; that said Class A and Class B preferred stock were thereupon issued to Columbia Oil in exchange for and in retirement of the said notes; that by the creation of said Class B preferred stock in the par amount of \$1,000,000, Columbia Oil secured for itself direct control, and Columbia Gas secured for itself indirect control, of the entire property of Panhandle Eastern, which has a value of more than \$67,000,000; that said recapitalization as aforesaid was part of the scheme, device and plan of the Columbia Companies and the individual defendants (except Hillman and Bay, whose participation was limited, as above set forth) to acquire and perpetuate their control of Panhandle Eastern, all in violation of the Decree of this Court. Corporate action necessary to effect such recapitalization was taken at meetings of directors superintended by Charles A. Munroe, one of the defendants in this action, all in violation of the Decree herein. Six of the nine directors of Panhandle Eastern at the time of the filing of the Supplemental Complaint hereinafter referred to on December [fol. 441] 21, 1938, represented the stock ownership of Columbia Oil, and still represent said ownership.

XXI. After the Columbia Companies had procured (a) the ownership of the aforesaid Detroit extension, (b) additional common stock of Panhandle Eastern, (c) the dilution of the interest of Mogan as a stockholder of Panhandle Eastern, and (d) the Class B preferred stock of Panhandle Eastern carrying with it the right to elect the controlling members of the Board of Directors of Panhandle Eastern, the said Columbia Companies thereupon, in further violation of the express terms of the Decree of this Court, and through the use of said Detroit extension acquired from Panhandle Eastern as aforesaid, contrived to and did effect arrangements with Panhandle Eastern for the transportation of gas through the Detroit extension, so as to secure to themselves a further monopoly in the commerce of natural gas in Indiana, Ohio and Michigan, by causing Panhandle Eastern to enter into an agreement of March 17th, 1936 with the Michigan Gas Transmission Corporation, the wholly-owned subsidiary of Columbia Gas, which provided in part as follows (Panhandle Eastern is referred to as "Eastern", and Michigan Gas Transmission Corporation as "Michigan"):

"4. If at any time in the future, while this Agreement remains in force, *Eastern has additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan*, then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, that Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and Eastern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) [fol. 442] of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis (whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern." (Italics added.)

XXII. The purpose, intent and effect of the contract, from which the foregoing provision is quoted, was to enable

Columbia Gas to contract with the various municipalities and distribution systems located along said extension in Indiana, Ohio and Michigan, for the sale by Columbia Gas of Panhandle Eastern's gas to such communities at prices and on terms satisfactory to Columbia Gas and to enable Columbia Gas further to dominate and control the sale of natural gas in the States of Ohio, Indiana and Michigan. Columbia Gas at the time of the making of said contract controlled the executive management of Panhandle Eastern and well knew that the gas reserves of Panhandle Eastern were more than adequate to supply the total capacity of Panhandle Eastern's Pipe Line and that there would be at all times "additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan (Gas)", and intended thus to contrive and did contrive that Columbia Gas should have control of any gas of Panhandle Eastern that was available for ultimate distribution in the territory that might be then reached by the pipe lines of Michigan Gas Transmission Corporation and to exact for itself an unreasonable and unfair price for such gas, in order that the price structure of the Columbia system in Indiana and Michigan and more particularly in Ohio, should not be affected. The defendants (except [fol. 443] Hillman) have agreed between themselves and with the management of Panhandle Eastern that the contracts between Panhandle Eastern and Michigan Gas Transmission Corporation should be construed so as not to permit Panhandle Eastern to sell gas for industrial use directly in the territory reached by the line of Michigan Gas Transmission Corporation or to require the line of Michigan Gas to carry the same, with the result that Panhandle Eastern has been prevented from offering gas for industrial use in Indiana, Ohio and Michigan, particularly in the Toledo area, although it could have sold great quantities of the same.

The provision of said contract to the effect that Panhandle Eastern might require Michigan Gas to transport gas to the territory served by the Michigan Gas line in the event that Panhandle Eastern should itself obtain markets along said line has never been availed of by Panhandle Eastern, by reason of the domination by Columbia Gas of the management of Panhandle Eastern. Said provision, even if availed of, requires Panhandle Eastern to pay an unreasonable tribute to Columbia Gas on all gas so transported and ef-

fectively prevents Panhandle Eastern from entering into any free competition in the Indiana and Michigan markets. The Indiana market is further assured to Columbia Gas by the fact that Panhandle Eastern, pursuant to its contractual arrangements which the Columbia Companies caused to be made between Panhandle Eastern and Michigan Gas Transmission Corporation, is required by Michigan Gas to pay the same rate for the transportation of its gas to points in Indiana, near the beginning of the Michigan Gas line, as is paid for transportation to points in Michigan at the end of said line, 300 miles distant. Pursuant to an arrangement between Panhandle Eastern and Michigan Gas Transmission Corporation made on or about March 30, 1936, said Michigan Gas Transmission receives directly from Detroit City Gas Company the funds paid by the latter company for Panhandle Eastern's gas, and remits to Panhandle Eastern the balance thereof after deducting its charges.

Panhandle Eastern has made no serious effort to reach any markets along said Michigan Gas line or elsewhere in Ohio or Michigan. Panhandle Eastern is still neglecting to sell its gas in the markets of Indianapolis, Ind., Kansas City, Mo. and St. Louis, Mo. as was alleged in Paragraph 28 of the Amended Petition of the United States, hereinbefore referred to and filed on October 30, 1935. The extent [fol. 444] to which the available markets have already been secured by Columbia Gas is shown by the map attached hereto and marked Exhibit D.

XXIII. In the year 1937 a meeting of the stockholders of Moka was held under the supervision of the Chancery Court of the State of Delaware, for the purpose of electing a Board of Directors of Moka who would manage its affairs after its assets, consisting principally of stock of Panhandle Eastern, should be returned to it by its Receivers. The defendants or some of them sought at such meeting to obtain control of Moka for their own purposes, and to that end expended large sums of money in soliciting proxies and in purchasing or causing to be purchased stock of Moka. Such acts were done with the intent and purpose of dominating and influencing Panhandle Eastern and in violation of the express terms of the Decree of this Court.

XXIV. That by the Decree of this Court, one Gano Dunn, Esq., was nominated, constituted and appointed as Trustee,

to hold the capital stock of Panhandle Eastern owned by the defendant Columbia Oil, to vote the same for Directors nominated in the first instance by Columbia Oil, and to act himself as a Director of Panhandle Eastern; and that ever since on or about February 3rd, 1936, the said Gano Dunn has acted, and is now acting, as such Trustee. He has pursuant to said Decree been compensated for his said service with funds provided in equal shares by the defendants Columbia Gas and Columbia Oil.

XXV. That since his appointment as such Trustee, the said Gano Dunn has flagrantly used his position for his personal advantage and in breach of his trust, in that:

(a) On or about October 20, 1936, he caused and permitted Panhandle Eastern to employ the J. G. White Engineering Corporation, to make an examination and report on the properties of Panhandle Eastern and caused and permitted Panhandle Eastern to pay fees therefor aggregating \$25,000. Said Gano Dunn was and is President and the active head of said J. G. White Engineering Corporation, which at the time of its designation to make such report was wholly unequipped by experience so to do.

[fol. 445] (b) In March, 1937, Panhandle Eastern desired to market an issue of its first mortgage bonds in the amount of \$24,000,000. Said Gano Dunn rejected suggestions that the said issue be sold competitively and caused said issue to be sold to a banking syndicate organized and headed by a banking firm with which one Ashton Hawkins, his nephew, was associated. Said Hawkins had been placed on the Panhandle Eastern Board by the said Trustee early in 1936, after the consent decree above referred to, and continued as such director until the summer of 1938, when he was requested by the United States Department of Justice to resign.

XXVI. That said Gano Dunn, as such Trustee, has ever since his appointment exceeded his powers, in that he has assumed to dictate the affairs of Panhandle Eastern and to supply without authority a species of "executive leadership" which has at all times effectuated the purposes of the Columbia Companies hereinbefore alleged; he failed and neglected to cause Panhandle Eastern to seek any markets in Indiana, Ohio or Michigan, or to enter into any competition with Columbia Gas, although meanwhile he

has permitted Columbia Gas to acquire said markets without competition. While refusing to permit Panhandle Eastern to take over firm sales in the State of Indiana, he has nevertheless permitted Panhandle Eastern to sell large quantities of gas to Columbia Gas (i. e., to Michigan Gas Transmission Corporation) at low or dump prices, and Columbia Gas in turn, well knowing that such supply of gas would not fail for lack of capacity, entered into long term contracts to supply Indiana markets at high or firm prices, and under and by virtue of such contracts dominates and will continue to dominate same for many years. He has at all times approved or failed to prevent the acts of the defendants hereinabove set out. He has appointed executive officers of Panhandle Eastern who were selected by Columbia Gas. He has failed to make report to this Court of acts of the defendants which he was advised constituted contempt of said Decree. He undertook to and did extend aid and assistance to agencies of one or more of the defendants herein who sought at the 1937 annual meeting of stockholders of Moka, the only other stockholder of Panhandle Eastern, to obtain control thereof. He refused for a long time to permit Moka to select and have the full number of directors on the Board of Panhandle Eastern to which Moka was entitled; and he has permitted the [fol. 446] Columbia companies to influence the management and directorate of Panhandle Eastern in violation of the decree.

XXVII. The Decree herein provides that the said Trustee shall be subject to removal at the discretion of the Court.

XXVIII. That said Decree was predicated on the complete divestiture by Columbia Gas, within a reasonable time, of all control, legal or practical, direct or indirect of Panhandle Eastern by

(a) No longer owning stock of any class having present or potential voting rights in Columbia Oil, or

(b) Causing Columbia Oil to divest itself of all Panhandle Eastern stock;

that although a reasonable time has long since elapsed to complete such divestiture, Columbia Gas has not proceeded under either (a) or (b) above, but on the contrary and since the date of the Decree has increased its control of Colum-

bia Oil and has caused Columbia Oil in turn to increase its ownership of Panhandle Eastern voting securities.

XXIX. That the Decree further provided as follows (Section V):

"That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

XXX. That the Intervenor, Missouri-Kansas Pipe Line Company, is the same corporation by that name mentioned and referred to in said Amended Petition of the United States in this cause, and in the Stipulation incorporated in said Decree. That Mokon is substantially interested in the subject matter of this suit and its interests are affected by this suit and by the said Decree herein and will be further affected by the further proceedings to be had in this Court pursuant to the Supplemental Petition of the United States. Intervenor's principal asset is its common [fol. 447] stock of Panhandle Eastern, amounting to 324,326 shares of the 728,652 common shares outstanding, and constitutes all the outstanding stock of Panhandle Eastern except that which is owned by Columbia Oil as aforesaid. Intervenor has by the said acts of said defendants been injured in its property in that Panhandle Eastern has, notwithstanding its ample reserves of natural gas and the ample capacity of its pipe line, been prevented from availing itself of new markets in the states of Indiana, Michigan and Ohio, and has acquired no substantial new markets since the date of said Decree except by sales to Michigan Gas Transmission Corporation which, as hereinabove alleged, is a wholly owned subsidiary of Columbia Gas. Intervenor has also been injured in its property by the acts of the said Trustee as aforesaid. Said Decree, if construed to permit the acts hereinbefore alleged, injures the property of this Intervenor in that the defendant Columbia Gas, while claiming to act under the provisions of said

Decree, in truth has evaded and violated the same and has secured its monopoly of the Indiana and Ohio markets and has prevented Panhandle Eastern from selling natural gas in said states and in Michigan (except Detroit) otherwise than through the line of Michigan Gas Transmission Corporation, and in that Panhandle Eastern has paid excessive charges to said Michigan Gas Transmission Corporation.

XXXI. That if plaintiff is not permitted to participate in this action, Mokañ will by reason of the facts hereinbefore alleged suffer great injuries for which it will have no adequate redress.

XXXII. The stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil, is in the custody of an officer of this Court, to wit, Gano Dunn, appointed by this Court's said Decree, above referred to. Intervenor is so situated as to be affected by the disposition of said property, as prayed for by the United States in its Supplemental Complaint herein, and will be adversely affected unless said disposition is made to parties wholly independent of and disconnected with any of the defendants herein, and may be bound by the Decree to be entered herein. The representation of intervenor's interest by existing parties may be inadequate.

XXXIII. That this Petition is filed by Mokañ as the owner of a substantial interest in the capital stock of Panhandle Eastern as aforesaid, both in its own right and also in behalf of and for the benefit of Panhandle Eastern for the reason that Panhandle Eastern has refused to intervene herein and to assert its rights arising out of the said violations of the said Decree.

XXXIV. Receivers of Mokañ were appointed by the Chancellor of the State of Delaware in March, 1932. Said receivers managed the property and affairs of Mokañ until on or about October 15, 1937, when the principal assets of Mokañ, including its Panhandle Eastern common stock, were returned to Mokañ by order of said Chancellor. The Board of Directors of Mokañ and its officers were not elected until August 17, 1937.

XXXV. That on December 21, 1938, the petitioner, the United States of America, filed herein its motion for leave

to serve a supplemental complaint, which supplemental complaint was attached to said motion. Said supplemental complaint, which is hereby made a part hereof as if fully set forth, alleged in part as follows:

"The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture. * * *"

\ Said supplemental complaint prayed:

"That this honorable Court exercise the jurisdiction retained by it in section V of said decree of January 29, 1936, for the purposes therein stated, to wit, to give full effect to said decree and to make such other and further orders and decrees and to take such action as may be necessary to the carrying out thereof, and enter a judgment herein to the following effect:

[fol. 449] 1. Adjudging that, in order to achieve the declared primary purpose of said decree of January 29, 1936, namely, to restore Panhandle Eastern to, and maintain Panhandle Eastern in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, it is necessary to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern."

and prayed for other relief. That on or about January 12, 1939, an order of this Court was entered herein directing the defendants herein to answer said supplemental complaint.

Wherefore, petitioner prays:

1. That the defendants be adjudged guilty of contempt for failure to comply with and for having violated the terms, conditions and provisions of the Decree of this Court entered herein on January 29th, 1936.

2. That said Decree be interpreted, enlarged and enforced as follows:

(a) That it be decreed that Columbia Gas holds as trustee for Panhandle Eastern its pipe line from Dana to Zionsville, Indiana, and from Zionsville to Detroit, Michigan, and that Columbia Gas be ordered and directed forthwith to transfer said line to Panhandle Eastern upon such terms and conditions for the security of its investment therein as this Court may deem just and to account to Panhandle Eastern for the issues and profits thereof.

(b) That Columbia Gas be ordered and directed forthwith to cause Michigan Gas Transmission Corporation to transfer to Panhandle Eastern any and all contracts or agreements for the supply of gas entered into with any municipalities, persons, firms or corporations in the States of Indiana, Michigan and Ohio, since the entry of the said Decree.

(c) That Columbia Oil be ordered forthwith to surrender to Panhandle Eastern at cost for cancellation its Class B preferred stock of Panhandle Eastern and 80,000 shares of the common stock of Panhandle Eastern.

[fol. 450] (d) That Columbia Oil be ordered forthwith to sell its remaining stock of Panhandle Eastern to a purchaser or purchasers and upon terms to be approved by this Court.

(e) That the exceptions set forth in Article II of the decree be stricken out.

3. That Gano Dunn be removed as Trustee, and that a new Trustee be appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities.

4. That such other or further relief may be granted as to the Court may seem just and equitable.

And your Petitioner will ever Pray.

Missouri-Kansas Pipe Line Company, by W. C. Tringham, Treasurer, Petitioner.

Biggs & Lynch, by Stewart Lynch, Solicitors for Petitioner.

[fol. 451] UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 3rd day of February, A. D., 1939, personally appeared before me, the subscriber, a notary public for the district aforesaid, William C. Tringham, who, being by me first duly qualified according to law, did depose and say:

That he is Secretary of Missouri-Kansas Pipe Line Company, the corporation created by and existing under the laws of the State of Delaware, the petitioner in the foregoing petition, and that what is set forth in the foregoing petition, so far as the same relates to his own act and deed or to the act and deed of said complainant is true, and so far as the same relates to the act and deed of any other person or persons or to matters alleged on information and belief he believes the same to be true; that he executed the foregoing petition on behalf of said company under and by virtue of a resolution of the Board of Directors of said company authorizing him thereto, and that the seal affixed to said petition is the common and corporate seal of said corporation and was likewise affixed by authority of the Board of Directors thereof; that the Receivers of Missouri-Kansas Pipe Line Company, appointed by the Chancellor of the State of Delaware, were shareholders of Panhandle Eastern Pipe Line Company from on or about June 1, 1936 until on or about October 15, 1937, at which time the said shares devolved upon Missouri-Kansas Pipe Line Company by operation of law and have since been held by it; that this action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction; that on January 30, 1939, the Board of Directors of Panhandle Eastern Pipe Line Company, by a majority vote, resolved not to cause Panhandle Eastern Pipe Line Company to apply for intervention in this cause for the purpose of alleging the restraints which have been imposed upon said Panhandle Eastern Pipe Line Company in the free distribution of natural gas in competition with others and praying for the appointment

[fol. 452] of a trustee to hold the properties of Michigan Gas Transmission Corporation.

William C. Tringham.

Sworn to and subscribed before me, the day and year aforesaid. Dorothy D. Sheppard, Notary Public. Queens Co. Clks. No. 1781, Reg. No. 6628. N. Y. Co. Clks. No. 1201, Reg. No. 9S825. Commission expires March 30, 1939.

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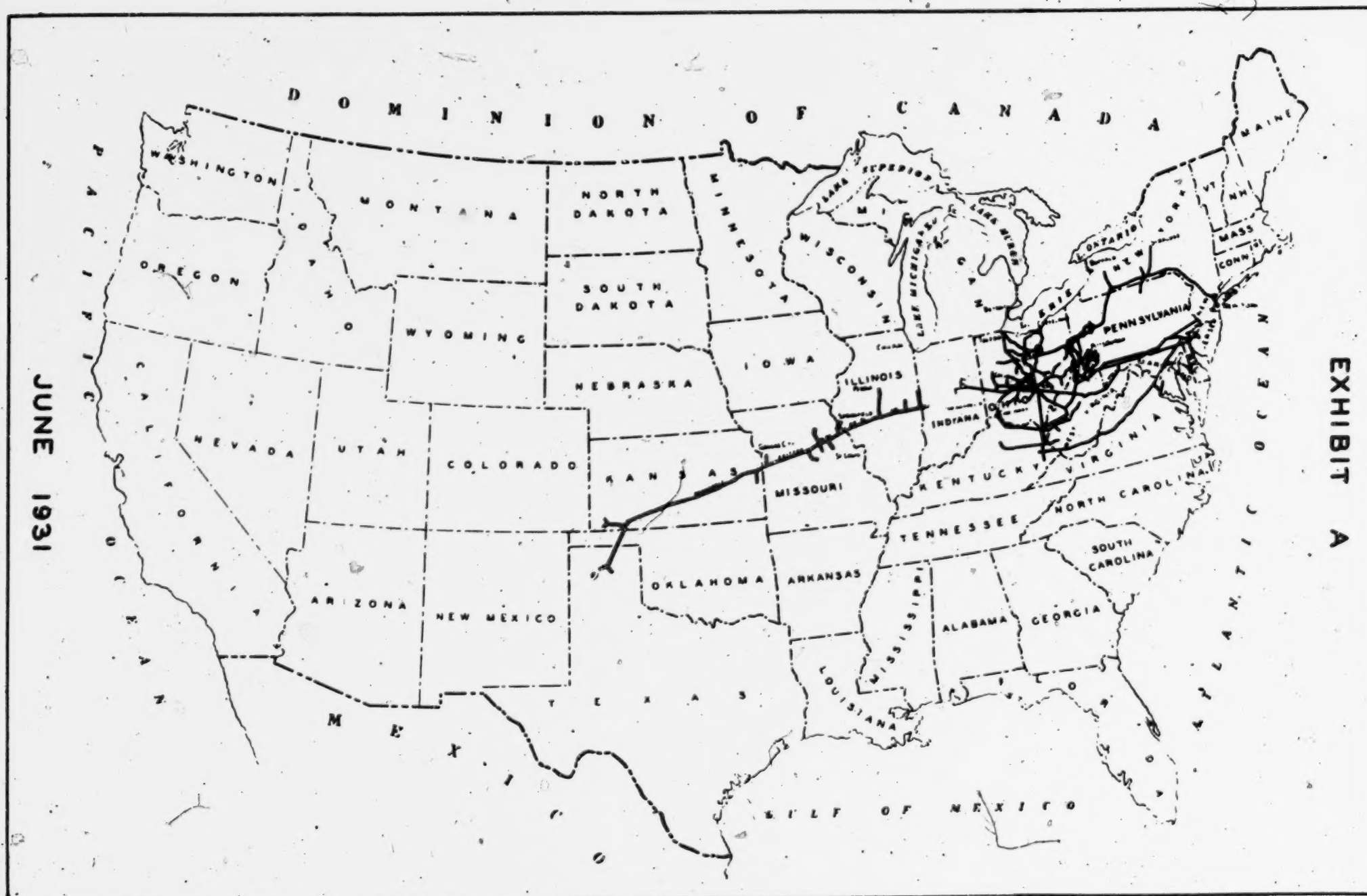
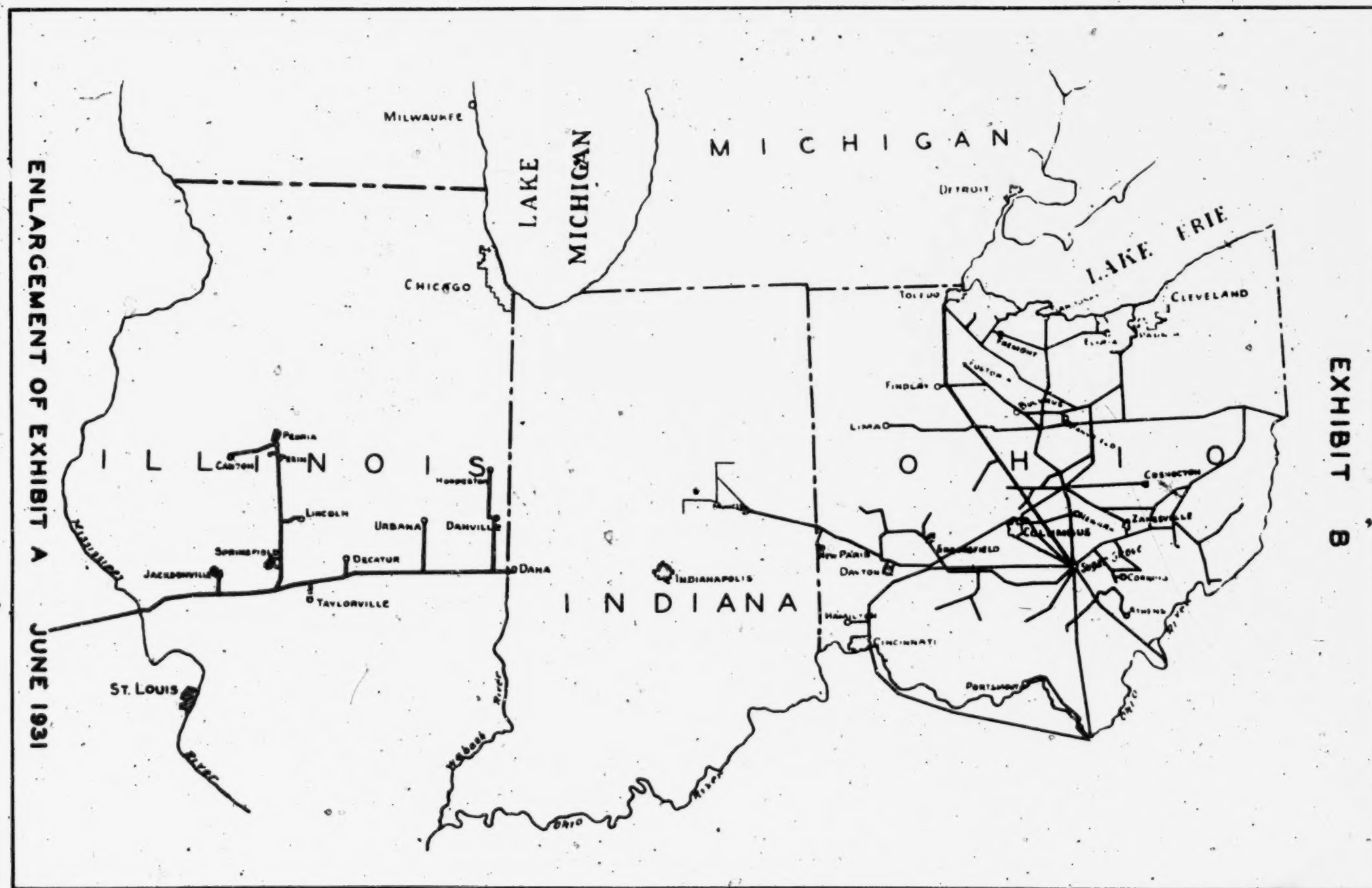
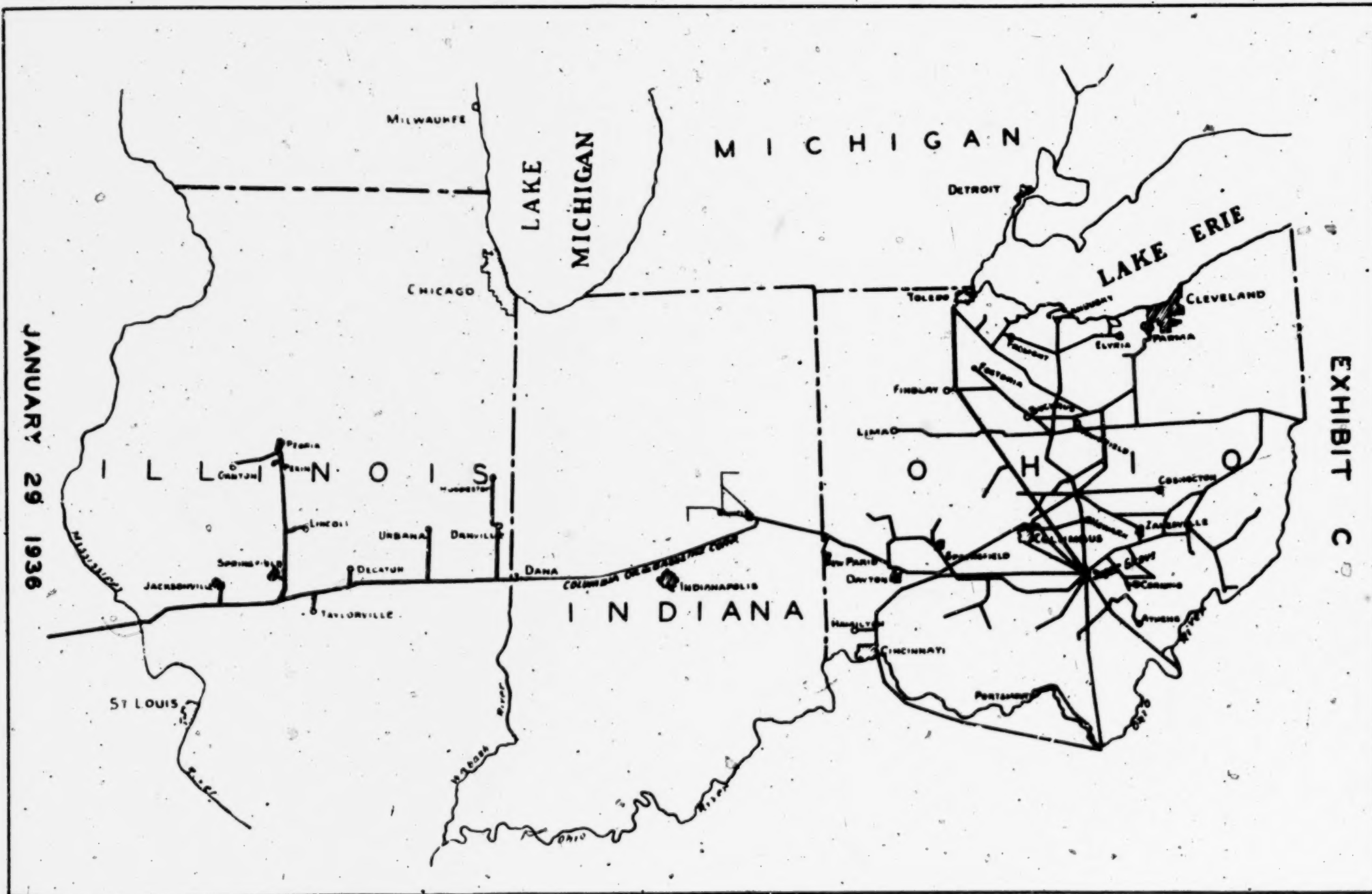
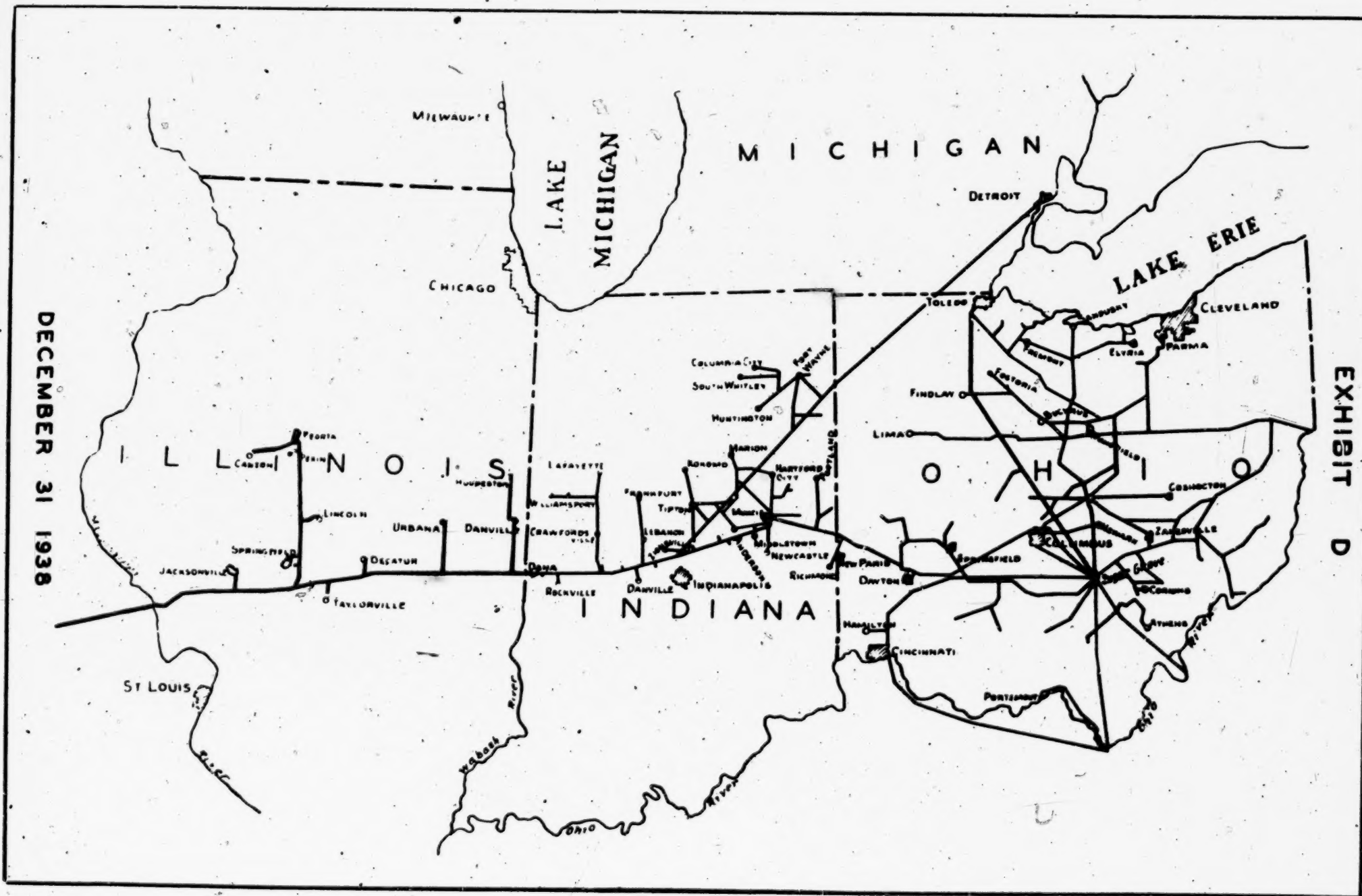


EXHIBIT A





DECEMBER 31 1936



of the supplemental complaint herein marked "I" and entitled "Summary of relevant provisions of the decree of January 29, 1936", sufficient to form a belief as to the truth thereof, except that defendant admits that a certain decree was entered herein on or about January 29, 1936, and defendant respectfully refers to the original of said decree filed with this Court for all the terms and provisions thereof.

2. Said defendant denies that he has any knowledge or information of any of the allegations contained in that part of the supplemental complaint herein marked "II" and entitled "Developments since entry of the decree of January 29, 1936", sufficient to form a belief as to the truth thereof.

3. Said defendant alleges that he has no right, title, interest or claim in or to the subject matter of the supplemental complaint herein and that no claim or demand of any nature whatsoever is alleged or asserted against defendant in said supplemental complaint.

[fol. 460] Wherefore, defendant prays judgment dismissing the complaint herein as against defendant John H. Hillman, Jr., with costs.

(Sgd.) H. F. Reindel, Caleb S. Layton, Solicitors for Defendant, John H. Hillman, Jr.

[fol. 461] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT ON MOTION OF MISSOURI-KANSAS PIPE LINE COMPANY FOR LEAVE TO INTERVENE—Filed March 29, 1939

Motion for Leave to Intervene *

Missouri-Kansas Pipe Line Company, a Delaware corporation, moves the court for an order granting it leave to intervene in this proceeding and to file the petition annexed

* In the interest of brevity, Columbia Gas & Electric Corporation will be referred to in this opinion as "Columbia Gas", Columbia Oil & Gasoline Corporation as "Columbia Oil", Panhandle Eastern Pipe Line Company as "Panhandle Eastern" and Missouri-Kansas Pipe Line Company as "Mokan".

to its motion and requiring defendants respectively to answer or otherwise plead thereto.

Petitioner alleges it owns 324,326 shares of the 728,652 shares of the outstanding common stock of Panhandle Eastern Pipe Line Company.

This suit in equity was brought by the Attorney General of the United States under the Anti-Trust acts. The defendants duly answered and denied the material allegations of the bill. Upon a stipulation between the parties to this cause a consent decree (hereinafter referred to as "consent decree") was entered on January 29, 1936. Section V of the decree provided:

[fol. 462] "That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

December 21, 1938 United States of America filed its supplemental complaint praying, inter alia, that this court exercise the jurisdiction retained by it in section V above recited and in order to give full effect to said decree that this court enter judgment:

"3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern,

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this court for approval, . . . a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a), . . . a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Reconstituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, * * * for a limited term and with powers and duties appropriately defined.

The time for answer was extended by stipulation and the answer has not been filed to the Government's supplemental complaint.

[fol. 463] February 6, 1939 Mogan filed its motion for leave to intervene in this suit and to file the petition annexed to its motion. The prayers of this petition are:

"1. That the defendants be adjudged guilty of contempt for failure to comply with and for having violated the terms, conditions and provisions of the Decree of this Court entered herein on January 29, 1936.

2. That said Decree be interpreted, enlarged and enforced as follows:

(a) That it be decreed that Columbia Gas holds as trustee for Panhandle Eastern its pipe line from Dana to Zionsville, Indiana, and from Zionsville to Detroit, Michigan, and that Columbia Gas be ordered and directed forthwith to transfer said line to Panhandle Eastern upon such terms and conditions for the security of its investment therein as this Court may deem just and to account to Panhandle Eastern for the issues and profits thereof.

(b) That Columbia Gas be ordered and directed forthwith to cause Michigan Gas Transmission Corporation to transfer to Panhandle Eastern any and all contracts or agreements for the supply of gas entered into with any municipalities, persons, firms or corporations in the States of Indiana, Michigan and Ohio, since the entry of the said Decree.

(c) That Columbia Oil be ordered forthwith to surrender to Panhandle Eastern at cost for cancellation its Class B preferred stock of Panhandle Eastern and 30,000 shares of the common stock of Panhandle Eastern.

(d) That Columbia Oil be ordered forthwith to sell its remaining stock of Panhandle Eastern to a purchaser or purchasers and upon terms to be approved by this Court.

(e) That the exceptions set forth in Article II of the decree be stricken out.

3. That Gano Dunn be removed as Trustee, and that a new Trustee be appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities.

[fol. 464] 4. That such other or further relief may be granted as to the Court may seem just and equitable."

In prayer 1 Mogan seeks to raise a question of contempt by defendants in respect to alleged violations of the consent decree of January 29, 1936. By subdivisions (a) and (b) of prayer 2 Mogan seeks to raise a complicated question of property in a transmission line owned by Michigan Gas Transmission Corporation, a subsidiary of Columbia Gas, and extending from the terminus of Panhandle Eastern at Dana, Indiana to Detroit, Michigan. By subdivision (c) of prayer 2 Mogan seeks to procure the retirement of 80,000 shares of common stock of Panhandle Eastern now held by Columbia Oil. By prayer 3 Mogan seeks to have the past conduct of the trustee appointed under the consent decree of January 29, 1936 inquired into in order that he may be removed for alleged violations of his trust. The statement of these prayers indicates how far they depart from the scope of the supplemental complaint and how serious a delay would be involved in the determination of the questions raised thereby.

Intervention of Right

Intervention of right is governed by subdivision (a) of Rule 24 of the Federal Rules of Civil Procedure:

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

[fol. 465] Courts are unanimous in requiring prompt action on the part of an intervenor who seeks to assert rights

in a suit to which he is not a party. The new rule above quoted requires that application for intervention be timely. It begins with the words "Upon timely application * * *." The matters of which petitioner complains,—the acquisition by Columbia Gas of ownership of the Detroit extension, the acquisition by Columbia Oil of class B preferred stock of Panhandle Eastern, the acquisition by Columbia Oil of common stock of Panhandle Eastern in connection with the Detroit financing, and the March 17, 1936 contract,—all took place before June 1, 1936. Columbia Gas and Columbia Oil have spent many millions of dollars carrying out the transactions. Petitioner had full notice and knowledge of all these arrangements prior to their consummation. These details were set out in the offer of settlement made by Columbia Oil and Columbia Gas to Moka and were accepted by Moka after full hearing thereon in the court of Chancery of the State of Delaware. Obviously Moka's application is not a timely one.

Clause (1) of subdivision (a) of Rule 24 is plainly inapplicable.

Clause (2) of subdivision (a) relates to cases in which the applicant for intervention has an interest in the action represented by a party so that the applicant may be bound by a judgment in the action. The question of adequacy of representation does not arise unless the applicant is represented in the action. Neither Moka, as a substantial stockholder of Panhandle Eastern nor Panhandle Eastern, is [fol. 466] represented by *by* the United States. The interest of either of them will not be bound by a judgment on the supplemental complaint. The judgment of this court upon the issues tendered in the supplemental complaint will not bind Moka or Panhandle Eastern. Such a judgment can not bind them with respect to the wholly different issues tendered by Moka's proposed petition of intervention. Petitioner has no right to encumber the main action which is being conducted by the Attorney General with extraneous issues of a private nature. *United States v. Radi Corporation*, 3 F. Supp. 23, 25. *United States v. Northern Securities Co.*, 128 Fed. 808, 813.

Clause 3 of subdivision (a) relates to cases in which the applicant will be adversely affected by a disposition of property in the custody of the court in which the applicant asserts an interest. This property consists of stock in Pan-

handle Eastern beneficially owned by Columbia Oil, and transferred to the voting trustee. In that stock neither Mokan nor Panhandle has any property right. Any disposition of that stock which would terminate control of Columbia Oil over Panhandle Eastern could not be regarded as adverse to either Panhandle Eastern or Mokan. On the contrary, Mokan seeks such disposition. Early in the English law a third person claiming an interest in property under the control of the court was permitted by interrogatories to establish his claim to or lien upon such property. This principle found expression in old Equity Rule 37. The new rule does not specifically set forth the nature of the interest in the property which a person must have [fol. 467] in order to establish his claim to intervention as a matter of right. It is improbable that the Supreme Court in promulgating this new rule intended to destroy well established principles as the basis of intervention as of right. It would produce chaos to require the courts to recognize the absolute right to intervention of strangers who had no legal or equitable interest in the subject matter of the action.

Clause 3 contemplates that the person having the right of intervention should have a legal interest in the property in the custody of the court. The res in this case is the Panhandle Eastern stock in the possession of Dunn. That stock is not being administered by the court. Dunn is not an administrative officer of the court. His duties as trustee merely contemplate the holding of Panhandle Eastern stock owned by Columbia Oil for the purpose of seeing that the provisions of the consent decree are carried out and that the affairs of Panhandle Eastern are free from the control and domination of Columbia Gas. Dunn is obliged to turn over to Columbia Oil all dividends except certain stock dividends. He must vote the stock in the manner directed by Columbia Oil. He is a mere watchman to see that the provisions of the consent decree are carried out. The stock of Panhandle Eastern is not "in the custody of the court or of an officer thereof" within the meaning of Rule 24(a).

Petitioner's final contention is that Rule 24(a) has broadened the well established principle to the extent of no longer requiring "any actual property interest in the res". [fol. 468] This position is without authority to sustain it.

Permissive Intervention

Permissive intervention is governed by subdivision (b) of Rule 24 of Rules of Civil Procedure:

“(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action; (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant’s claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties”.

Clause (1) has no application. Clause (2). The prayers of the proposed petition of intervention diverge sharply from the subject matter of the supplemental complaint. Affording petitioner relief would fundamentally alter and seriously complicate the character of this proceeding. The bare statement of the prayers sufficiently indicates how far they depart from the scope of the Government’s complaint and how serious a delay would be involved in the determination of the questions raised thereby. The situation thus falls squarely within the last sentence of subdivision (b) which codifies prior equity practice.

“The intervenor was not entitled to come into the suit for the purpose of having adjudicated a controversy solely between it and plaintiff. Issues tendered by or arising out of plaintiff’s bill may not by the intervenor be so enlarged. It is limited to the field of litigation open to the original parties * * *. Introduction by intervention of issues outside those that properly may arise between the original parties complicates the suit and is liable to impose upon plaintiff a burden having no relation to the field of the litigation opened by his bill”. *Chandler Co. v. Brandtjen, Inc.*, 296 U. S. 53, 57, 59.

[fol. 469] “It is apparent that, the right to become a party to the litigation being given, the range of activity of the newcomer in the prosecution or defense of the interest he is thus permitted to assert must necessarily be as extensive as, but no greater than, that allowed the original parties to the suit”. *Leaver v. K. & L. Box & Lumber Co.*, 6 F. (2d) 666.

Anti-Trust Suit.

An individual may not participate in a suit brought under the Anti-Trust Laws by the Attorney General of the United States where the Attorney General does not consent to such intervention. In the present case the Attorney General affirmatively objects to the intervention. In its brief the government states that the United States opposes the motion of Mogan for leave to intervene "because (1) Mogan is not entitled to intervention of right, and (2) intervention by Mogan for the purposes set forth in its proposed petition would unduly complicate and delay the adjudication of the issues tendered by plaintiff's supplemental complaint". When the Anti-Trust laws are violated frequently there are private persons or corporations who feel themselves aggrieved.

Outside this suit Mogan can assert any claim for damages it may have against the defendants or for relief against Dunn for his alleged breaches of trust. Such a right has been recognized by this court.

"However the petitioner and other stockholders of Radio Corporation should not be deprived of their 'day in court'. The petitioner or any stockholder of Radio Corporation believing himself aggrieved by the action of General Electric or Westinghouse under or pursuant to the provisions of the consent decree may file a bill in this court seeking appropriate relief." United States v. Radio Corporation, 3 F. Supp. 23.

Mogan's motion for leave to intervene must be denied.

(Sgd.) John P. Nields, J.

March 29, 1939.

[fol. 470] IN UNITED STATES DISTRICT COURT

ORDER DENYING INTERVENTION BY MISSOURI-KANSAS PIPE
LINE COMPANY—Filed March 30, 1939

And now, to-wit, this 30th day of March, A. D. 1939, the above entitled cause having come on to be heard upon the motion of Missouri-Kansas Pipe Line Company for leave to intervene in the above stated cause, and the said motion

having been fully argued by counsel, and upon consideration thereof by the Court, it is

Ordered by the Court that the said motion be and the same is hereby denied.

(Sgd.) John P. Nields, J.

[fol. 471] IN UNITED STATES DISTRICT COURT

ANSWER OF COLUMBIA GAS & ELECTRIC CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, THOMAS R. WEYMOUTH, THOMAS B. GREGORY AND EDWARD REYNOLDS, JR.—Filed May 15, 1939

And Now Come Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr., each being one of the defendants in the above-entitled cause, and answer the allegations of the Supplemental Complaint therein as follows:

First. They admit the allegations of paragraph 1 of Article I.

Second. They admit the allegations of paragraph 2 of Article I but pray leave to refer to the Decree of January 29, 1936 (hereinafter referred to as the Decree), for a more exact and fuller statement of the provisions thereof referred to in said paragraph 2.

Third. They admit the allegations of paragraph 3 of Article I, except that they deny that such allegations correctly state the full provisions of the Decree as to the persons from whom the directors of Panhandle Eastern must be selected, and said defendants allege that said Decree contains the following provisions limiting the persons, other than the Trustee himself, selected by Columbia Oil from whom such directors are to be chosen and voted for by the Trustee;

“Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, [fol. 472] but not including any of the individual defendants herein or any one (except with the approval of the

trustee and this Court) who after January 1, 1931, has been or hereafter becomes an officer, director, agent or employee of Columbia Gas; and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder”;

and said defendants pray leave to refer to said Decree for a more exact and fuller statement of the provisions thereof referred to in said paragraph 3.

Fourth. They admit the allegations of paragraph 4 of Article I, except that they deny the allegation that the voting trust was set up as an interim device to effectuate the principal purpose of securing a position of free and independent action for Panhandle Eastern.

Fifth. They admit, on information and belief, the allegations of paragraph 1(a) of Article II except that (1) they deny knowledge or information sufficient to form a belief as to whether Moka also owns a warrant entitling it to purchase an additional 80,000 shares of the common stock of Panhandle Eastern at \$25 per share, and (2) they deny the allegation *the allegation* of the last sentence of said paragraph 1(a) that in the settlement agreement between Columbia Gas and Columbia Oil and the receivers of Moka, Columbia Gas and Columbia Oil required said receivers to agree to distribute said warrant (or the stock represented thereby) pro rata among the stockholders of Moka and [fol. 473] that Columbia Oil agreed to purchase from Panhandle Eastern any part of said warrant (or the shares represented thereby) not subscribed for by the stockholders of Moka thereby increasing the proportionate holdings of Columbia Oil in the common stock of Panhandle Eastern, and said defendants pray leave to refer to said settlement agreement for a correct and full statement of the provisions thereof regarding the matters referred to.

Sixth. They admit, on information and belief, the allegations of paragraph 1(b) of Article II that New York United Corporation, a New York corporation, is a wholly-owned subsidiary of United Corporation, a Delaware corporation, and that either one of said two Corporations or both together own more of the common stock of Columbia Gas than any other stockholder of Columbia Gas, but they deny any knowledge or information sufficient to form a belief as to which of said Corporations is such owner, or, if both are owners, the respective proportions of such ownership; and defendants admit the remaining allegations of paragraph 1(b) of Article II except that (1) they deny the allegation that the entire funded debt of Columbia Oil, all of which is owned by Columbia Gas, amounts in face value to approximately \$23,000,000, and allege that the same amounts to only \$21,000,000 face amount, and (2) they deny the allegation that prior to the Decree all the voting trust certificates for the stock of Columbia Oil were held by the common stockholders of Columbia Gas and allege, on information and belief, that for a considerable period prior to the Decree certain of said voting trust certificates were held by common stockholders [fol. 474] of Columbia Gas and certain of said certificates were held by persons not stockholders of Columbia Gas, and (3) they deny the allegation that when the voting trust of the common stock of Columbia Oil was dissolved the common stock was distributed on a pro rata basis to the common stockholders of Columbia Gas and allege, on information and belief, that on the dissolution of said voting trust the common stock of Columbia Oil was distributed to the holders of the voting trust certificates issued by the voting trustees in amounts called for by the respective voting trust certificates, and (4) they deny the allegation that the common stockholders of Columbia Gas and the common stockholders of Columbia Oil have remained and now are substantially identical.

Seventh. They admit, on information and belief, the allegations of paragraph 2 of Article II.

Eighth. They admit the allegations of Article II, Section 3(a) of the complaint, that Columbia Gas has not disposed of all stock of any class having present or potential voting rights in Columbia Oil, and that Columbia Oil has not divested itself of ownership of all stock of Panhandle

Eastern, but they deny that such disposing or divesting is contemplated by the last paragraph of Section III or any other part of the decree except as therein stated, and they deny that at any time since the entry of the decree Columbia Gas has had any control of Panhandle Eastern.

Ninth. They admit the allegation of paragraph 3(b) of Article II that it is the expressly declared purpose of said [fol. 475] Decree to maintain Panhandle Eastern in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, and admit the allegation of said paragraph 3(b) of of Article II that said Decree does not provide any particular method or procedure for Columbia Gas disposing of all stock of any class having present or potential voting rights in Columbia Oil or for Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern, but they deny the remaining allegations of said paragraph 3(b) of Article II, and, without limiting the scope of this general denial, specifically deny the allegation that it is the declared purpose of said Decree to restore Panhandle Eastern to a position of free and independent action in the production, transmission, sale and distribution of Natural gas in competition with others, and state that such allegation is an incorrect statement and that there is no such purpose declared in the Decree.

For a First Separate Affirmative Defense Said Defendants
Allege That:

Tenth. Said decree by its terms permits Columbia Gas to retain, without restriction as to time, all stock of Columbia Oil owned by it of any class, whether or not having present or potential voting rights, and also permits Columbia Oil to retain, without restriction as to time, all stock of Panhandle Eastern owned by it, without being either itself required to dispose of it or to permit the trustee appointed under the Decree to dispose of it. In reliance on the Decree, Columbia Gas has taken all action on its part required by the stipulation attached to the Decree, to which [fol. 476] reference is hereby made as if the same were set forth at length herein, and has advanced or paid to Columbia Oil large sums of money and other consideration to permit Columbia Oil to retain and acquire its present stockholdings of Panhandle Eastern, and has built, at the cost to

Columbia Gas of many millions of dollars, a pipe line connecting the line of the Panhandle Eastern with the City of Detroit, whereby natural gas has been brought to and is being served in Detroit, all in accordance with or as permitted by the provisions of the Decree and with the full knowledge of the Government, and the Government is consequently now estopped from seeking a modification of the Decree and from seeking to require either Columbia Gas to divest itself of any stock of Columbia Oil having voting rights or to require Columbia Oil to dispose of the stock of Panhandle Eastern owned by it or to submit to a disposition thereof by the trustee, and from seeking any other of the so-called relief prayed for by it in its complaint.

Wherefore these defendants pray that said supplemental complaint be dismissed and that they may go hence without delay and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Clarence A. Southerland, Solicitor for Defendants Columbia Gas & Electric Corporation, George H. Howard, Phillip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr.; Douglas M. Moffat, of Counsel.

May 15, 1939.

[fol. 477] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS COLUMBIA OIL & GASOLINE CORPORATION AND CHARLES A. MUNROE TO SUPPLEMENTAL COMPLAINT—Filed May 15, 1939

And Now Comes Columbia Oil & Gasoline Corporation (hereinafter sometimes referred to as "Columbia Oil") and Charles A. Munroe, two of the defendants in the above-named cause, and for their answer to the allegations contained in the supplemental complaint of the plaintiff therein, allege as follows:

1. They admit the allegations contained in paragraph 1 of Article I of the supplemental complaint to the extent that the defendant Columbia Gas, Panhandle Eastern and the defendant Columbia Oil were described in Section I of the decree entered herein on January 29, 1936, substantially as set forth in said paragraph 1 of Article I of the sup-

plemental complaint, except that they deny that the description in said Section I of said decree speaks as of the date of the supplemental complaint or as of any date other than the date of said decree. These defendants pray leave to refer to said decree for the complete and correct provisions thereof on the trial of this case.

2. They admit the allegations contained in paragraph 2 of Article I of the supplemental complaint, except that they deny that said allegations completely set forth or summarize the restrictions and prohibitions, and exceptions thereto, [fol. 478] imposed by said decree of January 29, 1936, upon Columbia Gas, Columbia Oil and the other defendants herein. These defendants pray leave to refer to said decree for the complete and correct provisions thereof on the trial of this case.

3. They admit the allegations contained in the first two sentences and subdivisions (b) and (d) of the third sentence of paragraph 3 of Article I of the supplemental complaint, but they deny that the allegations contained in subdivision (a) of the third sentence of said paragraph 3 correctly or completely set forth or summarize the provisions contained in Section III of said decree of January 29, 1936, limiting the persons to be recommended by the defendant Columbia Oil from whom the directors of Panhandle Eastern to be elected by the Trustee are to be selected and providing for the removal and replacement by the Trustee of the directors so selected with others of his own choosing, and they deny that the allegations contained in subdivision (c) of the third sentence of said paragraph 3 correctly or completely set forth or summarize the provisions contained in Section III of said decree, as amended by the decree entered June 19, 1936, relating to the compensation to be paid to the Trustee and the reimbursement of expenditures incurred and to be incurred by him. These defendants pray leave to refer to said decree and said amended decree for the complete and correct provisions thereof on the trial of this case.

[fol. 479] 4. They admit the allegations contained in subdivision (a) of paragraph 4 of Article I of the supplemental complaint and the substantial correctness of the language of said decree of January 29, 1936, as quoted in subdivision (b) of said paragraph 4, but they deny the remaining allegations contained in subdivision (b) of said

paragraph 4. These defendants pray leave to refer to said decree for the complete and correct provisions thereof on the trial of this case.

5. They admit the allegations contained in paragraph 1 (a) of Article ~~II~~ of the supplemental complaint that Columbia Oil now is the beneficial owner of 404,326 shares of common stock of Panhandle Eastern representing a majority of the 728,652 shares issued and outstanding, \$10,000,000 par value of Class A preferred stock of Panhandle Eastern and \$1,000,000 par value, being the entire issue, of Class B preferred stock of Panhandle Eastern, that the Class B preferred stock is non-callable and entitled the holders thereof (as a class) to elect two directors to the board of directors of Panhandle Eastern, that the common stock and Class B preferred stock beneficially owned by Columbia Oil elect six of the nine directors of Panhandle Eastern, and that out of said six directors one must be the voting trustee, but they allege that pursuant to the provisions of Section III of the decree entered herein on January 29, 1936, the voting trustee has held and now holds the legal title to and has been and is the owner of record of the aforementioned shares of common and pre-[fol. 480] ferred stock of Panhandle Eastern beneficially owned by Columbia Oil, and has, since the entry of said decree, voted said stock for the election of directors and upon all other questions and matters in which the stock is entitled to be voted, pursuant to and subject to the directions and limitations contained in said decree to which these defendants pray leave to refer for the complete and correct provisions thereof on the trial of this case; and they admit that the remaining 324,326 shares of the outstanding common stock of Panhandle Eastern were acquired by Moka under the terms of a settlement agreement provided for in Section V of the stipulation filed in connection with said decree of January 29, 1936, made and entered into by and between Columbia Gas and Columbia Oil on the one hand and the Receivers of Moka appointed by the Chancery Court of the State of Delaware on the other, and approved by said Court on the 29th day of April, 1936; but they deny knowledge or information sufficient to form a belief as to whether said 324,326 shares of stock of Panhandle Eastern are held by Moka or as to whether Moka also owns a warrant entitling it to purchase an additional

80,000 shares of the common stock of Panhandle Eastern at \$25 per share; and they deny the remaining allegations contained in said paragraph 1 (a) except that they allege that in the said settlement agreement between Columbia Gas and Columbia Oil and the Receivers of Mokon, Columbia Oil agreed to purchase from Panhandle Eastern said additional 80,000 shares of the common stock of Panhandle Eastern at \$25 per share to the extent that the stockholders of Mokon should not exercise their rights to [fol. 481] subscribe to said shares, subject to the right of Mokon or any new corporation taking over its assets under any plan of reorganization or readjustment or reclassification of its stock to repurchase the same at \$25 per share, plus interest at the rate of 6% per annum, during a certain prescribed period. These defendants pray leave to refer to said settlement agreement for the complete and correct provisions thereof on the trial of this case.

6. They admit the allegations contained in the first, second and seventh sentences of paragraph 1 (b) of Article II of the supplemental complaint that Columbia Gas owns 400,000 shares, being the entire amount issued and outstanding, of preferred stock of Columbia Oil, that such stock, as long as owned by Columbia Gas, carries with it the right to elect a minority of the board of directors of Columbia Oil, and that in the election of directors of Columbia Oil the common stockholders of Columbia Oil enjoy the right of cumulative voting; but they deny that they have any knowledge or information sufficient to form a belief as to the allegations in said paragraph 1 (b) that New York United Corporation is a New York corporation, is a wholly owned subsidiary of United Corporation, a Delaware corporation, is the largest single common stockholder of Columbia Gas, or owns approximately 20% of the outstanding voting securities of Columbia Gas; and they admit the remaining allegations of said paragraph 1 (b) except that (1) they deny the allegation that the entire funded debt of Columbia Oil, owned by Columbia Gas, is in a total face amount of approximately \$23,000,000, and (2) they deny the allegation that prior to the entry of the decree of January 29, 1936, all voting trust certificates for common stock of Columbia Oil were held by the holders of the common stock of Columbia Gas, and (3) they deny the allegation that on the dissolution of the

voting trust the common stock of Columbia Oil was distributed, on a pro rata basis, to the common stockholders of Columbia Gas, and (4) they deny the allegation that the common stockholders of Columbia Gas and the common stockholders of Columbia Oil have remained and now are substantially identical.

7. They admit the allegations contained in paragraph 2 of Article II of the supplemental complaint.

8. They admit the allegations contained in paragraph 3 (a) of Article II of the supplemental complaint that Columbia Gas has not disposed of all stock of any class having present or potential voting rights in Columbia Oil and that Columbia Oil has not divested itself of ownership of all stock of Panhandle Eastern, but (1) they deny that such disposing or divesting is contemplated by the last paragraph of Section III or by any other provision of said decree, and (2) they deny that Columbia Gas at any time since the entry of the decree has had or now has any control of Panhandle Eastern.

9. They admit the allegations of paragraph 3 (b) of Article II of the supplemental complaint that the decree of January 29, 1936, expressly declares that the maintenance of Panhandle Eastern in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others con-[fol. 483] stitutes the proper basis for the entry of said decree, and that the decree does not provide for any particular method or procedure for Columbia Gas disposing of all stock of any class having present or potential voting rights in Columbia Oil, or for Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern but they deny all the remaining allegations of said paragraph 3 (b).

For a First Separate Affirmative Defense These Defendants
Allege That:

10. The defendant Columbia Gas has not, through these defendants, or either of them, or, on information and belief in any other manner, directly or indirectly, dominated or controlled, or attempted to dominate or control, the affairs of Panhandle Eastern. From the time when the defendant Columbia Oil issued to defendant Columbia Gas 400,000 shares of its new Non-Cumulative Participating

Preferred Stock in exchange for Columbia Oil's previously outstanding shares of preferred stock held by defendant Columbia Gas, the voting trust for Columbia Oil's common stock was dissolved and the other details provided for in Section IV of the stipulation, on which the decree of January 29, 1936 was entered, were carried into effect, all of which details were consummated shortly after the entry of said decree, the defendant Columbia Gas has not exercised and in fact has not been in a position to exercise, any domination or control over the affairs of Columbia Oil or, through Columbia Oil or on information and belief in any other manner, over the affairs of Panhandle Eastern. Neither have these defendants nor on information and [fol. 484] belief the defendant Columbia Gas or any of the other defendants herein, interfered or attempted to interfere in any way with the maintenance of said Panhandle Eastern in a position of free and independent action in the production, transmission, sale or distribution of natural gas in competition with others. These defendants and on information and belief the defendant Columbia Gas and the other defendants herein, have at all times obeyed each and every restriction and prohibition of said decree of January 29, 1936, and of the amended decree of June 19, 1936, and have complied with each and every provision of said decrees and of the stipulations on which said decrees were entered, which stipulations and decrees are hereby referred to and incorporated herein by reference to the same effect as if herein set forth at length.

For a Second Separate Affirmative Defense These Defendants Allege That:

11. The decree entered herein on January 29, 1936 and the stipulation between the parties, dated January 29, 1936, on which said decree was entered, constitute a final compromise and settlement of this controversy as between the plaintiff and the defendants, and these defendants, and on information and belief the defendant Columbia Gas and the other defendants herein, have fully complied with all the terms and provisions of said stipulation and decree, as well as the amended decree of June 19, 1936, and of the stipulation on which said amended decree was entered, as hereinabove alleged in paragraph 10 hereof. No change of conditions has taken place since the entry of said

decree or of said amended decree and no circumstances have existed, now exist or threaten to exist which would warrant said decree and/or amended decree to be modified or supplemented.

For a Third Separate Affirmative Defense These Defendants Allege That:

12. In reliance upon the provisions of the decree of January 29, 1936, and of the provisions of the stipulation between the parties, dated January 29, 1936, on which said decree was entered, the defendant Columbia Oil has incurred substantial obligations and expended large sums of money in the retention and acquisition of the securities of the Panhandle Eastern, all as permitted and contemplated by the provisions of said stipulation and decree, and, therefore, the plaintiff is estopped from now seeking to modify said decree or to have said decree supplemented in the manner requested in the supplemental complaint or in any other manner whatsoever.

Wherefore, these defendants pray that said supplemental complaint be dismissed; and that they may go hence without delay and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Daniel O. Hastings, Solicitor for Defendants
Columbia Oil & Gasoline Corporation and Charles
A. Munroe. Of Counsel: William H. Button, 27
Cedar Street, New York, N. Y. Auchincloss, Alley
& Duncan, 50 Broadway, New York, N. Y.

Dated, May 15th, 1939.

[fol. 486] IN UNITED STATES DISTRICT COURT

MOTION FOR ABANDONMENT OF SUPPLEMENTAL COMPLAINT—
Filed May 15, 1939

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, moves this Court to enter an order directing that the Supplemental Complaint filed by the plain-

tiff in this action on December 21, 1938 shall be abandoned.

This motion is made upon the ground that plaintiff has on this day moved this Court to vacate the Consent Decree entered in this action on January 29, 1936, and to permit plaintiff to file and serve an Amended and Supplemental Complaint which will replace said Supplemental Complaint of December 21, 1938.

Dated May 15, 1939.

(Sgd.) John J. Morris, Jr., U. S. Attorney for the District of Delaware. Address: U. S. Post Office Building, Wilmington, Delaware. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General. (Sgd.) Milton Katz, Special Assistant to the Attorney General. (Sgd.) John S. L. Yost, Special Assistant to the Attorney General.

[fol. 487] IN UNITED STATES DISTRICT COURT

MOTION BY UNITED STATES OF AMERICA TO VACATE DECREE OF
JANUARY 29, 1936—Filed May 15, 1939

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, moves this Court:

(1) To vacate the decree entered in this action on January 29, 1936; (2) to permit the plaintiff to serve and file the Amended and Supplemental Complaint annexed hereto; (3) to enter an order requiring that the relationships among the defendants herein, the trustee appointed pursuant to Section III of said decree and Panhandle Eastern Pipe Line Company be maintained in statu quo pending adjudication of the issues tendered by the Amended and Supplemental Complaint annexed hereto; and (4) to order the defendants to answer or otherwise plead to the Amended and Supplemental Complaint annexed hereto within twenty days after a copy thereof shall have been duly served.

This motion is based upon all the pleadings, records and other documents on file and upon all proceedings heretofore had in this action, and is made upon the grounds more particularly set forth in paragraphs 3-7, inclusive, of said

[fol. 488] Amended and Supplemental Complaint hereto annexed.

Dated May 15th, 1939.

(Sgd.) John J. Morris, Jr., U. S. Attorney for the District of Delaware. Address: U. S. Post Office Building, Wilmington, Delaware. (Sgd.) Milton Katz, Special Assistant to the Attorney General. (Sgd.) John S. L. Yost, Special Assistant to the Attorney General. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General. (Sgd.) Frank Murphy, Attorney General. (Sgd.) Thurman Arnold, Assistant Attorney General. (Sgd.) Wendell Berge, Special Assistant to the Attorney General.

[fol. 489] AMENDED AND SUPPLEMENTAL COMPLAINT.

(Annexed to Motion to Vacate Decree)

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, files this Amended and Supplemental Complaint. Plaintiff makes the following allegations upon information and belief.

I

1. Plaintiff re-alleges paragraphs Nos. 1-32, inclusive, together with the Exhibits thereto, of the Amended and Supplemental Petition filed in this action on October 30, 1935, which are incorporated herein as a part hereof, with the following modifications:

(a) Paragraph No. 14 of said Amended and Supplemental Petition is amended to read as follows:

"14. That Columbia Oil & Gasoline Corporation is a corporation of the State of Delaware, organized by Columbia Gas & Electric Corporation to hold the oil, gasoline and gas-producing properties of the Columbia System. Up to January 29, 1936, all of its first preferred stock and all of its second preferred stock was owned by Columbia Gas & Electric Corporation, and all of its common stock was deposited in a voting trust, against which voting trust certificates had

[fol. 490] been issued and were held by the holders of the common stock of Columbia Gas & Electric Corporation."

(b) Paragraph No. 17 of said Amended and Supplemental Petition is amended to read as follows:

"17. That since early in June, 1930, the defendants have made contracts and have been and now are engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan and Ohio, and have been and now are engaged in monopolizing, attempting to monopolize, and combining and conspiring to monopolize trade and commerce in natural gas in the States of Indiana, Michigan and Ohio, in violation of the Act of Congress approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies'.

"To that end, the defendants sought to prevent the construction of the natural gas pipe line described in paragraph 16 hereof. Failing that, they set out to obtain and did obtain control of the management and operation of said Panhandle Eastern Pipe Line Company and its subsidiaries. Having obtained such control, they set out to conduct and did conduct its activities and affairs so as to (a) prevent said Missouri-Kansas Pipe Line Company from obtaining its requirements of natural gas from said Panhandle Eastern Pipe Line Company, and (b) prevent said Panhandle Eastern Pipe Line Company from making available, either [fol. 491] directly or indirectly, its large supplies of natural gas in such manner as to compete with the Columbia System or endanger its actual or contemplated monopoly in the distribution and sale of natural gas in said States of Indiana, Michigan and Ohio. The defendants also sought to acquire ownership of the physical property of Panhandle Eastern, through bringing about a foreclosure of the mortgage securing the bonded indebtedness of Panhandle Eastern, or otherwise, as hereinafter more particularly described.

"The defendants herein have carried out or attempted to carry out these purposes in the manner and by the means hereinafter set forth."

(c) Paragraph No. 21 of said Amended and Supplemental Petition is amended by striking the last sentence thereof and substituting therefor the following:

"The defendants Gossler and Munroe induced Moka to accept the defendant Howard as such third voting trustee and ninth director by representing that said Howard would act impartially and in the best interests of Panhandle Eastern Pipe Line Company. But the selection of said George H. Howard as the third voting trustee and the ninth director of Panhandle Eastern Pipe Line Company, in fact constituted an act in furtherance of said combination and conspiracy, inasmuch as (a) at the time of such selection, said George H. Howard was president of United Corporation, which was and is the largest single stockholder in the defendant Columbia Gas & Electric Corporation, (b) within two weeks [fol. 492] after such selection, the said George H. Howard became a director of both the defendant Columbia Gas & Electric Corporation and the defendant Columbia Oil & Gasoline Corporation, and (c) during the period in which said George H. Howard served as such voting trustee and director, he acted in the interests of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation and assisted in effecting the purposes of said combination and conspiracy."

(d) Paragraph No. 23 of said Amended and Supplemental Petition is amended to read as follows:

"23. As soon as the new Board of Directors of Panhandle Eastern Pipe Line Company had been elected pursuant to the provisions of said agreement of September 30, 1930, the individual defendants P. G. Gossler, George H. Howard, and C. A. Munroe, who, together with Fred W. Crawford and George W. Crawford, both of whom are now deceased, constituted a majority of said Board, caused the election of new officers to manage and operate the affairs of said Panhandle Eastern Pipe Line Company. None of these new officers, with the exception of the defendant Burt R. Bay, had previously been identified either with Moka or with Panhandle Eastern Pipe Line Company, and all of them (including said defendant Burt R. Bay up to the date of his resignation as an officer of Panhandle Eastern Pipe Line Company on the 31st day of July, 1938) have been and are responsive to the wishes of the other defendants herein in the management of the operations and [fol. 493] affairs of said Panhandle Eastern Pipe Line Company."

(e) Paragraph No. 26 of said Amended and Supplemental Petition is amended as follows:

By inserting, after the word "receivers", which appears in said paragraph in the next to the last line on page 20 of said Amended and Supplemental Petition, the following: "appointed by the Court of Chancery of the State of Delaware, as more particularly described in the next succeeding paragraph,".

(f) Paragraph No. 27 of said Amended and Supplemental Petition is amended to read as follows:

"27. That by reason of its inability to purchase gas for resale from Panhandle Eastern Pipe Line Company, and because of the heavy obligations assumed in raising its share of the funds necessary to complete said Panhandle Eastern Pipe Line, Moka became financially embarrassed, and in March 1932, receivers of its property and assets were appointed by the Court of Chancery of the State of Delaware in and for New Castle County. By reason of said receivership, the defendant J. H. Hillman, Jr. became entitled to nominate and did nominate the four directors of Panhandle Eastern Pipe Line Company allotted to Moka by said agreement of September 30, 1930, and said Hillman and the three individuals nominated by him acted as directors of Panhandle Eastern Pipe Line Company continuously from the date of appointment of said receivers through the month [fol. 494] of January, 1936. As a result of a default in payment of said Moka collateral trust notes, described in paragraph 24 hereof, the said Hillman and his associates, in February, 1933, became the owners of 750 of the 1000 outstanding shares of Panhandle Corporation, which corporation owned one-half of the outstanding capital stock of Panhandle Eastern Pipe Line Company, and through his resulting domination of Panhandle Corporation, the defendant Hillman was in a position to assist and did assist in carrying out the objects and purposes of said combination and conspiracy. From the time when said Hillman and his nominees became members of the Board of Directors of Panhandle Eastern Pipe Line Company through the month of January, 1936, they acted in concert with the other individual defendants in so conducting the affairs of Panhandle Eastern Pipe Line Company as to carry out the purposes and objects of said combination and conspiracy."

(g) The last sentence of paragraph No. 30 of said Amended and Supplemental Petition is amended to read as follows:

“Said ‘Offer’ and ‘Plan’ were not dependent upon the consent or approval of said Chancery Court of Delaware, and if carried out would have resulted in ownership by the defendant Columbia Oil & Gasoline Corporation of the entire funded debt of Panhandle Corporation then in default and guaranteed by Mokon, as well as ownership of three-fourths of the outstanding capital stock of said Panhandle Corporation, which company, in turn, owned the 50% inter-[fol. 495] est in Panhandle Eastern Pipe Line Company originally owned by Mokon.”

(h) Paragraph No. 32 of said Amended and Supplemental Petition is amended by striking the words “in furtherance of said combination and conspiracy” which appear in the second line thereof.

2. On January 29, 1936, pursuant to a stipulation entered into between the plaintiff and the defendants, a consent decree was entered in this action.

3. The expressly declared purpose of said consent decree was to restore Panhandle Eastern Pipe Line Company (hereinafter referred to as “Panhandle Eastern”) to, and to maintain it in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others. More particularly, said decree was designed to terminate and thereafter prevent “domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation”. The course of events since the entry of said decree has, however, made it increasingly clear that said decree has been and is ineffectual toward the accomplishment of this explicit purpose, as hereinafter more particularly set forth.

4. The chief device upon which said decree relied to nullify the control exercised over Panhandle Eastern by the defendant Columbia Gas & Electric Corporation (hereinafter referred to as “Columbia Gas”), and to restore Panhandle Eastern to a position of free and independent [fol. 496] competitive action in the production, transmission, sale and distribution of natural gas, was the voting

trust established pursuant to Section III of said decree. By said Section III, it was provided that within ten days following the entry of the decree, the defendant Columbia Oil & Gasoline Corporation (hereinafter referred to as "Columbia Oil") should transfer to Gano Dunn, as voting trustee, all stock carrying present or potential voting rights then owned by Columbia Oil in Panhandle Eastern, and that any stock of Panhandle Eastern which might thereafter be acquired by Columbia Oil should likewise be promptly transferred to said trustee. The transfer of such stock was effected early in February, 1936, shortly after the entry of said decree. Gano Dunn, as trustee, has held all stock of Panhandle Eastern beneficially owned by Columbia Oil continuously since that date and now holds it, upon the following terms and conditions:

(a) It is his duty to vote such stock for the election of as many directors of Panhandle Eastern as such stock may be entitled to elect. One of the directors thus elected must be the trustee himself. The remainder must be selected from among persons recommended by Columbia Oil.

(b) It is his duty to vote such stock upon all other questions and matters in respect of which such stock is entitled to vote, as directed by Columbia Oil, except insofar as such directions may be inconsistent with the purposes of said decree.

(c) He receives compensation in the amount of \$22,500 per annum, paid in equal parts by Columbia Gas and Columbia Oil.

[fol. 497] (d) He likewise exercises certain other powers and is subject to certain other duties supplementary to those described above, as more fully described in said Section III of said decree.

5. The limitations imposed upon said trustee by the provisions summarized in sub-paragraphs (a) and (b) of paragraph No. 4 hereof have made it impossible for the voting trust to serve, in accordance with the purpose of said decree, as an effective insulator against the control theretofore exercised by Columbia Gas, through Columbia Oil, over Panhandle Eastern. In his effort to discharge his duties under these limitations, the trustee has from time to time sought the assistance and advice of various officials

of the Department of Justice. The inadequacy of said decree to prevent control of Panhandle Eastern by Columbia Gas has, moreover, resulted in frequent controversies among persons or groups financially interested in Panhandle Eastern as to whether the operations of Panhandle Eastern were being conducted in a manner consistent with the free and independent competitive status for Panhandle Eastern contemplated by said decree; and often, in these controversies, one or another of the persons or groups involved has likewise sought the advice and assistance of officials of the Department of Justice. These officials have endeavored to give such advice and assistance, only to find that a conscientious effort to counteract the control exercised over Panhandle Eastern by Columbia Gas within the framework of said decree would have involved them progressively deeper in supervision over the ordinary, day-to-day managerial decisions of the directors and officers of [fol. 498] Panhandle Eastern. These officials naturally could not give supervision of this sort, and such advice and assistance as they were able to give, being necessarily based upon a limited inquiry into the relevant facts and circumstances, was not sufficient to restore and maintain Panhandle Eastern to the position of free and independent action intended by said decree.

6. Not only has said consent decree failed to nullify those elements of control over Panhandle Eastern by Columbia Gas which existed at the time of entry thereof, but Columbia Gas has actually strengthened its position of control since that date, as follows:

(a) On August 31, 1935, after the commencement of this action and prior to the entry of said decree, Panhandle Eastern had entered into an agreement (hereinafter referred to as the "Detroit contract") with Detroit City Gas Company (which has since become Michigan Consolidated Gas Company, and which sells gas at retail in the City of Detroit, Michigan), by the terms of which Panhandle Eastern agreed for a period of fifteen years to supply natural gas to Detroit City Gas Company, for re-sale within the metropolitan area of Detroit. At the time when said Detroit contract was made, as well as at the time when said decree was entered, the eastern terminus of Panhandle Eastern's natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana

state boundary line, more than three hundred miles from Detroit. At that time, there was no pipe line connection [fol. 499] between this eastern terminus of Panhandle Eastern's pipe line and Detroit. A copy of said Detroit contract was filed in this Court by said trustee, in connection with his report covering his activities as such trustee for the six months' period from January 29, 1936, to July 29, 1936.

Said Detroit contract provided, among other things, that Panhandle Eastern would construct a pipe line extension from the eastern terminus of its then existing pipe line at Dana, Indiana, to the City of Detroit (hereinafter referred to as the "Detroit Extension"), and that Panhandle Eastern would reinforce its then existing pipe line. It contemplated that Panhandle Eastern would arrange for the financing of such construction and reinforcement, if it should be unable to undertake the financing thereof itself. Among other provisions, said contract contained the following:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said [fol. 500] date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

On January 31, 1936, almost immediately after the entry of said consent decree, the defendants herein caused Panhandle Eastern to enter into a contract with Columbia Gas and Columbia Oil, by which it was provided that Columbia Gas or Columbia Oil, through subsidiaries thereof, would build, own and operate said Detroit Extension, instead of Panhandle Eastern. A copy of said contract is attached hereto, as Exhibit I, and is made a part hereof. Such action was taken by the Board of Directors of Panhandle Eastern at the instance of Columbia Gas and Columbia Oil. Shortly before this, in contemplation of said contract, Columbia Gas caused to be organized a new company, named Michigan Gas Transmission Company, the entire capital stock of which was and now is owned by Columbia Gas. Columbia Gas thereupon advanced to said Michigan Gas Transmission Company the funds necessary for the construction of said Detroit Extension. Such construction was completed in the summer of 1936, and said Detroit Extension has ever since been and is now owned and operated by Michigan Gas Transmission Company. Michigan Gas Transmission Company has received and is now receiving large benefits and profits from said Extension, which it, in turn, pays to Columbia Gas in the form of dividends upon its stock.

In thus acquiring control over the physical means of access by Panhandle Eastern to the Detroit market, Columbia Gas increased its control over Panhandle Eastern. In addition, Columbia Gas exercised its control to prevent [fol. 501] Panhandle Eastern from serving markets in Indiana, Ohio and southeastern Michigan, which could have been readily served by Panhandle Eastern through the Detroit Extension. This restraint, and its consequences, are exemplified by the situation of the City of Toledo, Ohio. Toledo is not more than eight miles east of the Detroit Extension. At present, the gas needs of Toledo are served by Columbia Gas or one or more subsidiaries thereof, at a gate-rate of approximately 55¢ per thousand cubic feet of natural gas. At the same time, the City of Detroit is being served with natural gas supplied by Panhandle Eastern and delivered through the Detroit Extension at the rate of about 34¢ per thousand cubic feet. Columbia Gas, however, has exercised its control over Panhandle Eastern and over the Detroit Extension to prevent the logical and practicable step of building an eight mile branch pipe line

from the Detroit Extension to Toledo, and has prevented Panhandle Eastern from selling natural gas in the Toledo market in competition with itself and its subsidiaries.

(b) On January 31, 1936, almost immediately after the entry of said decree, the defendants exercised their control over Panhandle Eastern to bring about a reorganization thereof, pursuant to which:

(1) The common stock of Panhandle Eastern was increased to 808,652 shares, of which 404,326 shares were issued to Columbia Oil;

(2) A new Class "A" preferred stock, of \$10,000,000 par value, was created and issued to Columbia Oil; and

(3) A new Class "B" preferred stock, of \$1,000,000 par value, was created and issued to Columbia Oil. This Class [fol. 502] "B" preferred stock is non-callable, and entitles the holders thereof, as a class, to elect two directors to the Board of Directors of Panhandle Eastern.

As a result of such reorganization, Columbia Oil now beneficially owns 404,326 shares of the common stock of Panhandle Eastern, representing a majority of the 728,652 shares outstanding, and all of both classes of preferred stock of Panhandle Eastern. The common stock and the Class "B" preferred stock thus beneficially owned by Columbia Oil are entitled to elect six of the nine directors of Panhandle Eastern. Although this stock is voted by the trustee in accordance with the terms of the voting trust set up pursuant to Section III of said decree, and although one of the directors elected by such stock must be such trustee, the remaining five directors, being a majority of the board, have been selected from among persons recommended by Columbia Oil. Thus, ever since such reorganization, a majority of the Board of Directors of Panhandle Eastern have represented and now represent Columbia Oil and Columbia Gas.

The remaining 324,326 shares of the outstanding common stock of Panhandle Eastern are held by Missouri-Kansas Pipe Line Company, hereinafter referred to as "Mokan", a Delaware corporation. These 324,326 shares were acquired by Mokan under the terms of a settlement agreement, entered into pursuant to Section V of the stipulation filed in connection with said decree of January 29, 1936, between Columbia Gas and Columbia Oil on the one hand

and the receivers of Mokon appointed by the Chancery Court of the State of Delaware on the other, and approved by said Chancery Court on the 29th day of April, 1936. [fol. 503] Under such settlement agreement, Mokon also acquired a warrant entitling it to purchase an additional 80,000 shares of the common stock of Panhandle Eastern at \$25.00 per share. In said settlement agreement, it was provided that said warrant (or the stock represented thereby) would be distributed pro rata among the stockholders of Mokon, and Columbia Oil agreed to purchase from Panhandle Eastern any part of said warrant (or the shares represented thereby) not subscribed for by the stockholders of Mokon. Any such purchase would increase the proportionate holdings of Columbia Oil in the common stock of Panhandle Eastern.

In addition, the defendants have exercised their control to continue as officers of Panhandle Eastern, and to cause to be made officers of Panhandle Eastern, certain individuals previously employed by Columbia Gas or by a subsidiary thereof, or otherwise friendly to Columbia Gas and Columbia Oil, who, in the conduct of the affairs of Panhandle Eastern, have been willing to take and have taken orders from various of the defendants, and have been and are responsive to the general business and managerial policy of Columbia Gas and Columbia Oil. Among the officers thus continued in office was the defendant Burt R. Bay, who had been president and a director of Panhandle Eastern and was continued in office as vice-president and general manager up to the date of his resignation from said offices on the 31st day of July, 1938. Among the officers placed in high executive positions in Panhandle Eastern as aforesaid is Joseph D. Creveling, who, since June 15, 1936, has been and is now president of Panhandle Eastern.

[fol. 504] (c) Almost immediately after the entry of said decree, the defendants brought about a reorganization of Columbia Oil, pursuant to which:

(1) The voting trust for the common stock of Columbia Oil described in sub-paragraph (a) of paragraph No. 1 hereof, was dissolved, and the common stock of Columbia Oil was distributed on a pro rata basis to the common stockholders of Columbia Gas;

(2) A new class of participating preferred stock, numbering 400,000 shares, was created, and issued in its entirety to Columbia Gas, which has ever since owned and held, and now owns and holds the same, and

(3) Provision was made for a new issue of \$30,000,000 par value of debentures, of which debentures in the amount of \$23,000,000 (the entire amount now outstanding) were issued to Columbia Gas, which has ever since owned and held and now owns and holds the same. The new participating preferred stock thus created, as long as owned by Columbia Gas, carries with it the right to elect the largest number of directors constituting a minority of the Board of Directors of Columbia Oil. The common stock of Columbia Oil (distributed ratably among the common stockholders of Columbia Gas, as aforesaid) is entitled to elect the smallest number of directors constituting a majority of the Board of Directors of Columbia Oil. The common stockholders enjoy the right of cumulative voting.

The two largest common stockholders of Columbia Oil are the United Corporation, a Delaware corporation, and the defendant Philip G. Gossler, who at all times mentioned [fol. 505] herein has been an officer and director of Columbia Gas, and who now is Chairman of the Board of Directors thereof. Philip G. Gossler had likewise been a director of United Corporation, but had resigned shortly before the commencement of this action. New York United Corporation, a New York corporation, which is a wholly owned subsidiary of United Corporation, is the largest stockholder of Columbia Gas, owning approximately 20% of the outstanding voting securities of Columbia Gas. The defendant George H. Howard is president of United Corporation; he was formerly a director of Columbia Gas and of Columbia Oil, but resigned shortly prior to the institution of this action.

In addition, defendant Charles A. Mumroe is president and a director of Columbia Oil, and until the year 1935 was an officer and director of Columbia Gas. Defendant Edward Reynolds, Jr. is president and a director of Columbia Gas and is also a director of Columbia Oil. Walter C. Beckjord is Chairman of the Executive Committee, Executive Vice-President and General Manager of Columbia Gas, and a member of the Board of Directors of Columbia Oil. H. A. Wallace is a director of Columbia Gas and also a

director of Columbia Oil. All other directors and officers of Columbia Oil have recently been or now are directors or officers of Columbia Gas or of one or more of the subsidiary companies of Columbia Gas.

Columbia Gas and Columbia Oil since 1930, have had and now have, numerous intercorporate agreements relating to the interchange of gas and oil and other matters. Said corporations have offices on adjoining floors in the City of New York, in the State of New York, and are, in effect, identical in respect of management and control.

[fol. 506] 7. Since the entry of said decree on January 29, 1936, Panhandle Eastern has been prevented by the defendants from selling natural gas in the Indiana-Ohio-Michigan area, except to Michigan Gas Transmission Company. Michigan Gas Transmission Company has been re-selling the natural gas purchased from Panhandle Eastern to various gas distributing companies within this area, at prices substantially higher than those paid by it to Panhandle Eastern. A number of the gas distributing companies to which Michigan Gas Transmission Company has been selling such gas are subsidiaries of Columbia Gas. The various contracts between Panhandle Eastern and Michigan Gas Transmission Company, and between Michigan Gas Transmission Company and said gas distributing companies, pursuant to which such gas has been sold and re-sold, reflect a scheme of operations, devised and controlled by Columbia Gas, under which natural gas which is drawn from Panhandle Eastern's sources of supply, carried up to Indiana in Panhandle Eastern's pipe line, and made available for distribution in the Indiana-Ohio-Michigan area, is fed into the Columbia System, and distributed only subject to Columbia Gas' price, production, and distribution policies and in accordance with Columbia Gas' business convenience. Panhandle Eastern has thus been precluded from engaging in commerce in natural gas in this area, and from competing in any manner with Columbia Gas and Columbia Oil. On the contrary, reduced to the status of a feeder to the Columbia System, it has been made to support the actual and contemplated monopoly maintained and sought by Columbia Gas in the transmission, distribution and sale of Natural [fol. 507] Gas in the States of Indiana, Michigan and Ohio.

II

8. Plaintiff re-alleges paragraph No. 33 of said Amended and Supplemental Petition filed in this action on October 30, 1935, which is incorporated herein as a part hereof, with the following modifications:

For the word "petitioner" in the first line of said paragraph substitute the word "plaintiff".

In the fourth line of said paragraph, immediately following the word "hereof", insert the words "as herein modified".

9. The acquisition by Columbia Oil of 404,326 shares of the common stock of Panhandle Eastern, of \$10,000,000 par value Class "A" preferred stock of Panhandle Eastern, and of \$1,000,000 par value Class "B" preferred stock of Panhandle Eastern, as set forth in subparagraph (b) of paragraph 6 hereof, has had the effect of (a) substantially lessening competition between Columbia Oil, Columbia Gas and the companies comprising the Columbia System on the one hand, and Panhandle Eastern on the other, (b) restraining commerce in natural gas in the States of Kansas, Missouri, Illinois, Indiana, Michigan and Ohio, and (c) tending to create and creating a monopoly in natural gas in the States of Indiana, Michigan and Ohio, in violation of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

[fol. 508] 10. The acquisition of the capital stock of Michigan Gas Transmission Company by Columbia Gas, as set forth in subparagraph (a) of paragraph 6 hereof, has had the effect of (a) restraining commerce in natural gas in the States of Indiana, Michigan and Ohio, and (b) tending to create and creating a monopoly in natural gas in the States of Indiana, Michigan and Ohio, in violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

III

Wherefore, Plaintiff prays that this Court adjudge that:

A. The defendants herein have made contracts and have been and now are engaged in a combination and con-

spiracy in restraint of trade and commerce in natural gas among the several states in the manner and by the means set forth herein, in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies".

B. The defendants herein have been and now are engaged in monopolizing, attempting to monopolize, and combining and conspiring to monopolize trade and commerce among the several states in the manner and by the means set forth herein, in violation of the Act of Congress approved July [fol. 509] 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies".

C. The acquisition of 50% of the outstanding capital stock of Panhandle Eastern by defendant Columbia Oil, described in paragraph 8 hereof, constitutes a violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes".

D. The acquisition by defendant Columbia Oil of 404,326 shares of the common stock of Panhandle Eastern, representing a majority of the 728,652 shares of such common stock issued and outstanding, the \$10,000,000 par value of Class "A" preferred stock of Panhandle Eastern (being the entire issue thereof, and the \$1,000,000 par value of Class "B" preferred stock of Panhandle Eastern (being the entire issue thereof), constitutes a violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

E. The acquisition of the entire capital stock of Michigan Gas Transmission Company by defendant Columbia Gas & Electric Corporation constitutes a violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

F. The defendant Columbia Oil shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Panhandle Eastern.

[fol. 510] G. The defendant Columbia Gas shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Michigan Gas Transmission Company.

H. The defendants, all individuals, corporations, partnerships, associations or other persons acting, claiming or assuming to act for or in behalf of them or any of them, their officers, directors, agents and employees, their successors and assigns, and any and all persons who may directly or indirectly acquire ownership or control of the business or property of said defendants, shall be perpetually enjoined, individually and collectively, from owning, holding, acquiring, receiving, voting, or in any manner exercising ownership or control over the whole or any part of the securities issued by, or the property or business of, Panhandle Eastern or Michigan Gas Transmission Company.

I. The defendants, all individuals, corporations, partnerships, associations or other persons acting, claiming or assuming to act for or in behalf of them or any of them, their officers, directors, agents and employees, their successors and assigns, and any and all persons who may directly or indirectly acquire ownership or control of the business or property of said defendants, shall be perpetually enjoined, individually and collectively, from directly or indirectly exercising any control over, or directly or indirectly restraining or interfering in any manner with [fol. 511] the free and independent action of, Panhandle Eastern or Michigan Gas Transmission Company.

J. Plaintiff shall have such other and further relief as to this Court may seem proper.

Dated May 15, 1939.

(Sgd.) John J. Morris, Jr., U. S. Attorney for the District of Delaware. Address: U. S. Post Office Building, Wilmington, Delaware.

(Sgd.) Milton Katz, Special Assistant to the Attorney General.

(Sgd.) John S. L. Yost, Special Assistant to the Attorney General.

(Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

(Sgd.) Frank Murphy, Attorney General.

(Sgd.) Thurman Arnold, Assistant Attorney General.

(Sgd.) Wendell Berge, Special Assistant to the Attorney General.

[fol. 512]

EXHIBIT I

—Agreement made this 31st day of January, 1936, between Panhandle Eastern Pipe Line Company (hereinafter referred to as Eastern), a corporation of the State of Delaware, party of the first part, Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), a corporation of the State of Delaware, party of the second part, and Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil), a corporation of the State of Delaware, party of the third part.

Eastern has entered into a contract, dated the 31st day of August, 1935, with Detroit City Gas Company, whereby Eastern has contracted to supply the natural gas requirements of Detroit City Gas Company, up to the maximum amount therein specified, for the period set forth in said contract. A copy of said contract (hereinafter referred to as the Detroit Contract) is attached hereto as Exhibit A.

Section 7 of Article II of the Detroit Contract provides that it shall not become effective unless Eastern shall be able to arrange on or before February 1, 1936 for the financing of the construction of a pipe line connecting the eastern terminus of Eastern's existing pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line with the place of delivery specified in the Detroit Contract, as well as the reinforcement of the present pipe line of Eastern, since the present pipe line of Eastern is inadequate to deliver the quantity of gas called for by the Detroit Contract. In reliance on the present contract, Eastern has notified Detroit City Gas Company that it has been able to so arrange. The new pipe line extension must be constructed and ready for the delivery of gas not earlier than July 1, 1936, and not later than September 1, 1936. The amount required by Eastern to increase its present pipe line capacity and for working capital is estimated to be approximately \$8,600,000, of which it is estimated that approximately \$4,000,000 will be required in the spring of 1936, and the remainder at some subsequent date or dates.

Indiana Gas Transmission Corporation (hereinafter referred to as Indiana), a Delaware corporation, is a subsidiary of Columbia Oil and owns a natural gas transmission pipe line extending from the eastern terminus of East-

ern's existing pipe line across the State of Indiana to a connection with the pipe line of The Ohio Fuel Gas Company at King Measuring Station, near Muncie, Indiana.

Michigan Gas Transmission Corporation (hereinafter called Michigan), a Delaware corporation, is a subsidiary of Columbia Gas, organized for the purpose of constructing a pipe line extending from a point on Indiana's pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract.

[fol. 513] Now, Therefore, in consideration of the mutual covenants and agreements herein set forth, the parties hereto, severally and not jointly, covenant and agree as follows:

1. Eastern agrees with the parties hereto as follows:

(a) That it will enter into a contract with Indiana for the delivery of gas through Indiana's pipe line to Michigan and will enter into a contract with Michigan for the delivery of gas by Michigan to Detroit City Gas Company, such contracts to contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified in the Detroit Contract; or, in case Michigan shall acquire said line of Indiana extending from the Illinois-Indiana state line to Zionsville, will enter into a contract with Michigan providing for the delivery of said gas by Eastern to Michigan at the Illinois-Indiana state line, without the intervention of Indiana, the terms of such single contract to have substantially the same result to Eastern as the terms of the two contracts above referred to.

(b) That it will carry out all of the terms and provisions of said contracts or contract to the end that its obligations under the Detroit Contract may be fully performed.

(c) That ~~it~~ will apply the funds to be provided, as hereinafter stated, to increase the capacity of its existing main pipe line to the end that it shall be able to deliver to Indiana (or Michigan) at the Illinois-Indiana state line the quantities of natural gas at the times and at the pressure necessary to carry out the terms and provisions of its proposed contract with Indiana (or Michigan) referred to in subdivision (a) of this Article 1 hereof.

(d) That it will offer pro rata to the holders of its Common Stock preemptive rights to subscribe to such number

of shares of its Common Stock at such price per share as will yield not less than \$4,000,000, payable on or before April 1, 1936; and that it will sell to Columbia Oil, at such subscription price, all of the shares of Common Stock so offered to its other stockholders which shall not be subscribed for by them or by their assignees.

2. Columbia Gas agrees with the parties hereto as follows:

(a) That it will cause Michigan to enter into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof and will cause Michigan to carry out [fol. 514] the terms and provisions thereof.

(b) That it will cause Michigan to construct a natural gas transmission pipe line from a point on Indiana's existing pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract, said pipe line to be of a size, design and construction adequate to deliver at said place of delivery the maximum amount of natural gas called for by the Detroit Contract, and that it will furnish the funds necessary to enable Michigan to finance the construction of said pipe line.

(c) That, to provide the additional sum of \$4,600,000 required by Eastern for the further increase of its pipe-line capacity, Columbia Gas will purchase from Eastern 6% Bonds of Series A under the Mortgage Trust Indenture of Eastern at par or, if the restrictions of said Mortgage Trust Indenture, do not at the time permit this, will purchase Second Mortgage 6% Bonds of Eastern at par, which shall be exchangeable at the option of Columbia Gas into such Bonds of Series A when the restrictions of said Mortgage Trust Indenture to permit such exchange can be met.

(d) That it will advance, on open account to Columbia Oil until funded by the agreement of the parties, the necessary funds required by Columbia Oil to carry out its obligations under this Agreement.

3. Columbia Oil agrees with the parties hereto as follows:

(a) That, upon the issuance by Eastern of rights to subscribe for shares of Common Stock of Eastern, as provided in Subdivision (d) of Article 1 of this Agreement, it will (1) immediately subscribe for its pro rata proportion of

such shares, and (2) on April 2, 1936, will either (a) purchase such of the shares of Common Stock of Eastern so offered for subscription as shall not have been subscribed for by the stockholders of Eastern or their respective assignees or (b) if the time for the payment of such subscriptions shall have been extended by Eastern to a date later than April 1, 1936, advance to Eastern the amount that would be payable if all of the subscriptions to such shares of Common Stock which may be exercised later than April 1, 1936, had been exercised, the portion of such advance represented by the subscription rights later exercised to be repaid by Eastern, with interest at the rate of 6% per annum, upon the exercise of such subscription rights.

[fol. 515] (b) That it will cause Indiana to enter into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof, and will cause Indiana to carry out the terms and provisions thereof (unless Eastern shall elect to contract solely with Michigan as herein provided.)

(c) That it will cause Indiana to make any necessary additions to or reinforcements of its existing pipe line necessary to enable Indiana to transport through said pipe line the maximum quantities of gas called for by the requirements of the proposed contract between Eastern and Indiana referred to in Subdivision (a) of Article 1 hereof, and that it will provide Indiana with the funds necessary therefor.

4. All of the parties hereto severally agree with each other as follows:

(a) The parties hereto recognize the possibility that the corporate relationships between the parties hereto, Indiana and Michigan, may be changed, through the acquisition by Columbia Gas or by Michigan of the stock or pipe line of Indiana or by the merger of Indiana and Michigan, or by a combination of the foregoing, or otherwise. In any such case, this Agreement and the contracts referred to in Subdivision (a) of Article 1 hereof shall be appropriately amended, provided that such amendments shall be such as to preserve the following basic principles:

(1) That Columbia Gas and Columbia Oil shall be responsible for their respective obligations with respect to the financing of the reinforcement of Eastern's existing

pipe line as set forth in Subdivision (c) of Article 2 and in Subdivision (a) of Article 3 hereof;

(2) That Columbia Gas and Columbia Oil shall each be severally responsible for the financing of that portion, if any, of the pipe line from the Illinois-Indiana State line to the Place of Delivery specified in the Detroit Contract, which shall at the time in question be owned by their respective subsidiaries;

(3) That the operating contracts among the several pipe line companies (including Eastern) shall contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified in the Detroit Contract; and

[fol. 516] (4) That such operating contracts shall be as favorable to Eastern as the forms of contract referred to in Subdivision (a) of Article 1 hereof.

(b) That if, for any reason not involving a breach of the Detroit Contract by Eastern, Indiana or Michigan, the Detroit Contract shall fail to be performed, all the obligations of the parties hereto then unperformed shall become void and shall be of no further force or effect whatsoever.

(c) That this Agreement is subject to the securing of such consents to the taking of the action described hereunder from Federal and State authorities as may be necessary.

5. Anything herein contained to the contrary notwithstanding, Eastern shall have the right provided for in clause (b) of Article V of the Stipulation accompanying the Decree of the United States District Court for the District of Delaware entered on January 29, 1936, in the cause entitled United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, Defendants, being cause No. 1099 in Equity, which Stipulation was entered in the United States District Court for the District of Delaware contemporaneously with said Decree and is hereafter referred to as the Stipulation, to arrange for the financing of its undertakings under the Detroit Contract otherwise than through the assistance of Columbia Oil and Columbia Gas which they have agreed to furnish under their agreements herein.

It is therefore agreed by all parties hereto that Eastern shall have twenty days from the date of the curing of the default of its 6% Promissory Notes referred to in said clause of said Stipulation, or their retirement, in which to arrange for such financing from other sources. Eastern agrees that it will forthwith take the appropriate action necessary for such curing of default or retirement of its Notes and that if, by the expiration of twenty days thereafter, it shall not have notified in writing Columbia Oil and Columbia Gas, by notice delivered to their respective New York City offices, that it has been able to arrange such financing from other sources, this Agreement shall be binding on Eastern and Columbia Oil and Columbia Gas according to its terms. Pending said period of twenty days, both Columbia Oil and Columbia Gas remain bound according to the terms hereof. In case Eastern shall be able to arrange said financing from other sources and shall so notify the other parties hereto, both Columbia Oil and Columbia Gas shall be freed of their obligations hereunder to provide such financing. Eastern agrees that it will submit any such alternative method of financing, before entering into it, to the Trustee appointed under said Decree for his approval [fol. 517] and will not enter into it without his written approval.

In Witness Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed, and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, By Jas. L. Harrop, Vice-President. [Corporate Seal] Attest: Leith V. Watkins, Secretary. Columbia Gas & Electric Corporation, By E. Reynolds, Jr., Vice-President. [Corporate Seal] Attest: H. H. Pell, Jr., Secretary. Columbia Oil & Gasoline Corporation, By Charles A. Munroe, President. [Corporate Seal] Attest: W. A. Blind, Asst. Secretary. (3468)

[fol. 518] IN UNITED STATES DISTRICT COURT

MOTION OF COLUMBIA GAS & ELECTRIC CORPORATION, ET AL.
FOR APPROVAL OF PLAN FOR MODIFICATION OF CONSENT DECREE, & C.—Filed June 20, 1939

Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil) and Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), each being one of the defendants in the above-entitled cause, now move the Court:

(1) For an order providing that the decree in the above cause (hereinafter referred to as the Consent Decree) entered January 29, 1936, pursuant to a stipulation dated January 29, 1936, shall upon approval by this Court and, to the extent required by law, of the Securities and Exchange Commission, of the following Proposed Plan, be modified to meet the changed conditions resulting from the carrying out of such Plan, as follows:

B. I

Section II and Section IV of said Consent Decree shall be changed to provide that the following injunctions and other provisions shall be substituted for and in lieu of the present injunctions, provisions and language of said Sections II and IV:

A. The defendants, Columbia Gas, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, shall [fol. 519] be perpetually enjoined, individually and collectively, from directly or indirectly acquiring, owning or voting any securities issued by Panhandle Eastern Pipe Line Company (hereinafter referred to as Panhandle Eastern), and also any securities issued by Michigan Gas Transmission Corporation if and when but not until after the investment of Columbia Gas therein shall have been sold as contemplated in said Plan.

B. The defendant Columbia Gas shall be perpetually enjoined from:

(a) acquiring, owning or voting any securities issued by Columbia Oil, or any successor thereto, in addition to the Debentures of Columbia Oil now owned by it, provided

that Columbia Gas may acquire and own up to \$2,000,000 principal amount of additional Debentures of Columbia Oil if called upon to fulfill its existing commitment so to do, and further provided that Columbia Gas may continue to own and hold all Debentures of Columbia Oil now owned or hereafter so acquired until paid as provided in said Plan, and

(b) participating in or exercising any direction or control over the management of Columbia Oil, or any successor thereto, or Panhandle Eastern, and also the management of Michigan Gas Transmission Corporation if and when but not until after the investment of Columbia Gas therein shall have been sold as contemplated in said Plan.

C. The defendant Philip G. Gossler shall, within five years after the entry of the order approving the Plan, sell all stock now owned by him in Columbia Oil, or any successor thereto, and, in the intervening period so long as [fol. 520] he shall own any stock in Columbia Oil, or any successor thereto, shall be enjoined from voting any shares of such stock or suggesting how any shares of such stock owned by any of his relatives should be voted.

D. The defendants, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, shall be perpetually enjoined, individually and collectively, from (a) acquiring, owning or voting any securities issued by Columbia Oil, or any successor thereto, in addition to the securities, if any, issued by said Columbia Oil now owned by them, and (b) from participating in or exercising any direction or control over the management of Columbia Oil, or any successor thereto, or Panhandle Eastern, and also the management of Michigan Gas Transmission Corporation if and when but not until after the investment of Columbia Gas therein shall have been sold as contemplated in said Plan.

The decree shall state that nothing in the foregoing or other provisions thereof shall be construed to prevent or restrain in any manner the free and independent action of Columbia Gas and its subsidiary companies in the production, transportation, sale or delivery of gas in competition with Panhandle Eastern, or Michigan Gas Transmission Corporation or any other corporation, association, partnership or person.

II

The provisions of Section III of said Consent Decree appointing Gano Dunn trustee for the purposes and with the powers and duties set forth in said Section III shall [fol. 521] be terminated and the trusteeship of Gano Dunn thereunder shall be terminated, and said Gano Dunn shall on the entry of the order approving the Plan retransfer to Columbia Oil all the stock of Panhandle Eastern now held by him as such trustee. On filing his final report as such trustee in this Court, and the approval thereof, said Gano Dunn shall be discharged as such trustee.

III

Section V of said Consent Decree shall be modified to read as follows:

"That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof, and for the further purpose of requiring the resignation of any officer or director of Columbia Oil, or any successor thereto, whenever such step may be necessary to effectuate the purposes of the decree."

IV

A new section shall be added to the Consent Decree whereby Columbia Gas and Columbia Oil shall be required to carry out their respective parts under the Proposed Plan.

(2) For an order setting a date for a hearing upon the propriety of so modifying the Consent Decree.

Proposed Plan

1. Columbia Oil & Gasoline Corporation, hereinafter referred to as "Columbia Oil", will promptly transfer to Columbia Gas & Electric Corporation, hereinafter referred [fol. 522] to as "Columbia Gas", all of its properties other than its interest in Panhandle Eastern Pipe Line Company, hereinafter referred to as "Panhandle Eastern", these properties being the stock (constituting all of the author-

ized and outstanding shares) and obligations, if any (constituting all outstanding obligations if any remain at that time which have not been released by Columbia Oil to the respective debtor companies) of the following subsidiary companies:

- The Preston Oil Company
- The Viking Distributing Company
- The Virginia Gasoline & Oil Company
- The Union Oil & Gasoline Company, and
- The Ohio Fuel Supply Company

2. Columbia Gas will at the same time surrender to Columbia Oil 400,000 shares of the participating preferred stock of Columbia Oil (being all of the authorized and outstanding shares of said class of stock).

3. Pending such transfer, Columbia Oil will see that no dividends are paid and no transactions are entered into, except transactions in the ordinary course of business, by said Subsidiary Companies.

4. Columbia Gas will at the same time execute a suitable agreement to save Columbia Oil harmless from any liability which may arise under the suit, instituted by John L. Davies in 1937, against Columbia Gas, The Preston Oil Company, and others, and now pending in the Court of Common Pleas of Franklin County, Ohio.

5. In regard to the twenty-year debentures of Columbia Oil due February 1, 1956, outstanding in the principal [fol. 523] amount of \$21,000,000, and owned by Columbia Gas:

(a) Columbia Oil will agree to use its best efforts to dispose of the \$10,000,000 Class A Preferred Stock of Panhandle Eastern owned by it, at not less than par, to a purchaser who has no connection or interest, direct or indirect, with or in Columbia Gas or through the refinancing thereof by Panhandle Eastern from the sale of a new preferred stock to such a purchaser, and Columbia Oil will apply the moneys thus raised to reduce the total of debentures outstanding by at least the amount of \$10,000,000.

(b) Upon payment by Columbia Oil on account of said debentures, reducing the total outstanding to not over \$11,000,000, Columbia Gas will reduce the interest rate of

said debentures which will remain outstanding to 3% per annum.

(c) The maximum sinking fund payments of \$600,000 per year, provided for in the Indenture Agreement under which said debentures were issued, are to remain unchanged except that the times set forth in the said Indenture for semi-annual payments into the sinking fund shall be advanced from May 1, 1941, and November 1, 1941, respectively, to May 1, 1940, and November 1, 1940, respectively. The Indenture is also to be amended to include a provision that, in the event a dividend in excess of 20¢ per share in any one year is paid on the outstanding common stock of Columbia Oil, an amount in dollars equal to the excess dividends so paid shall be paid as additional sinking fund.

[fol. 524] (d) In the event of any default in payment on account of said debentures, Columbia Gas agrees that under no circumstances shall it be permitted to acquire ownership or control of any securities of Panhandle Eastern owned by Columbia Oil. If Columbia Gas should sue upon said debentures or any part thereof and obtain a judgment, and if there should be a levy upon any securities of Panhandle Eastern owned by Columbia Oil in execution of such judgment, Columbia Gas will not be permitted to be a purchaser at the judgment sale. Appropriate modifications to the foregoing effect shall be made in the Indenture relating to said debentures.

(e) At the time of the transfer to Columbia Gas of the interest of Columbia Oil in the Subsidiary Companies provided for in Section 1 above, Columbia Oil will apply all cash available, in excess of \$50,000 net working capital, to the retirement at par and accrued interest of its Debentures held by Columbia Gas.

6. All officers and directors of Columbia Oil shall resign upon the entry of the order and the approval of the Plan by the Securities and Exchange Commission (to the extent required by law), and be replaced by officers and directors not objectionable to the Department of Justice, such directors to own no stock or securities of Columbia Gas. Such directors shall not include anyone who is now, or ever has been, an officer, director or employee of Columbia Gas or any of its subsidiary companies.

[fol. 525] No such officer or director shall be appointed or elected except upon filing an affidavit or testifying in open court that he has not any connection or interest, direct or indirect, with or in Columbia Gas; and that he never has had any such connection except as may be specified in such testimony or such affidavit. Any such affidavit shall, upon filing, become part of the record upon which said consent decree is based.

The number of directors of Columbia Oil shall be no larger than the number of directors to which Columbia Oil may be entitled upon the board of Panhandle Eastern, and the directors of Columbia Oil shall be designated by Columbia Oil as its representatives upon the board of directors of Panhandle Eastern.

7. The name of Columbia Oil will be changed, subject to the necessary authorization of its stockholders, so as to eliminate the word "Columbia".

8. Subject to the approval of the Securities and Exchange Commission, if required by law, Columbia Gas shall sell the stock and indebtedness of the Indiana Gas Distribution Corporation and the Michigan Gas Transmission Corporation owned by it to Panhandle Eastern at any time within one year from the date of the entry of the order, if said Company wishes to buy the same, for a price equal to the actual investment of Columbia Gas therein, provided, Panhandle Eastern also purchases at the same time the gas pipe line in Indiana belonging to the Ohio Fuel Gas Company for the [fol. 526] price of \$355,191, this being calculated by Columbia Gas as the fair value thereof on the basis of a sale by it during the current year of part of this line to an independent company. However, if, during said year, Columbia Gas receives from other sources, not connected directly or indirectly with Columbia Gas, an offer satisfactory to it to purchase such stock and indebtedness, Columbia Gas will give Panhandle Eastern written notification of the proposed terms of sale and give Panhandle Eastern ninety days within which to meet such terms. If, during such ninety-day period, Panhandle Eastern does not meet the terms of said outside offer, then Columbia Gas shall be free to accept said offer.

If, at the expiration of said year, no such sale shall have been made, Columbia Gas will still stand ready to sell such stock and indebtedness of said companies on the same con-

ditions as above, subject to the approval of the Securities and Exchange Commission, if required by law, to others. To effectuate such sale, a trustee shall be appointed by the Court to sell such properties: Provided, that such trustee shall not, unless Columbia Gas consents, accept any bid for such properties at a price amounting to less than its actual investment therein, and provided, further, that such properties shall not be sold to any purchaser who is in any way connected or interested, directly or indirectly, with or in Columbia Gas. The trustee shall be appointed for one year, and shall not be qualified to succeed himself.

9. The carrying out of the Plan shall be contingent upon the approval to the extent required by law of the Securities and Exchange Commission.

(Sgd.) Daniel O. Hastings, Attorneys for defendant Columbia Oil & Gasoline Corporation. (Sgd.) Clarence A. Southerland, Attorneys for defendant Columbia Gas & Electric Corporation. (Sgd.) William H. Button. (Sgd.) James B. Alley. (Sgd.) Auchincloss, Alley & Dunnean, of Counsel for Columbia Oil & Gasoline Corporation. (Sgd.) Douglas M. Moffat. (Sgd.) Cravath, deGersdorff, Swaine & Wood, of Counsel for Columbia Gas & Electric Corporation.

[fol. 528] IN UNITED STATES DISTRICT COURT

MOTION BY MISSOURI-KANSAS PIPE LINE COMPANY FOR LEAVE TO INTERVENE—Filed July 5, 1939

Missouri-Kansas Pipe Line Company, a corporation of the State of Delaware, by Biggs & Lynch, its attorneys, moves this Honorable Court for an order granting it leave to intervene in the above-entitled action and to file the annexed petition.

This motion is made upon all the pleadings and proceedings heretofore had herein, and upon the grounds more particularly set forth in the petition hereto annexed.

Wherefore, petitioner moves this Court for an order granting it leave to intervene in this proceeding and to file the annexed petition, and requiring the parties defendant respectively to answer or otherwise plead thereto, within

twenty (20) days from the date of service, and for such other and further relief as may be just and proper.

Dated, July 3, 1939.

Biggs & Lynch, by (Sgd.) Stewart Lynch, Solicitors
for Petitioner.

[fol. 529] IN UNITED STATES DISTRICT COURT

PETITION OF MISSOURI-KANSAS PIPE LINE COMPANY FOR
INTERVENTION—Filed July 5, 1939

The Petition of Missouri-Kansas Pipe Line Company, the above named Applicant, respectfully shows to this Court and alleges:

I. Applicant, Missouri-Kansas Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

II. On March 6th, 1935, United States of America commenced this suit in equity against the above named defendants by the filing of a Petition herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust laws of the United States.

III. Thereafter and on October 30th, 1935, United States filed an Amended and Supplemental Petition (hereinafter referred to as the "Amended Petition"). Reference is made to said Amended Petition and to the Exhibits annexed thereto as if herein fully and at length set forth.

IV. Said Amended Petition alleged in substance that the defendants had been and were engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan and Ohio; that Missouri-Kansas Pipe Line Company had undertaken the construction of a large pipe line to transport natural gas from the Texas Panhandle and Kansas into the States of Indiana, Michigan, Ohio and [fol. 530] elsewhere, where Missouri-Kansas Pipe Line Company planned to sell its natural gas; that for such purpose, Missouri-Kansas Pipe Line Company caused the organization of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and be-

came the owner of the entire capital stock of that corporation; that the above named defendants then entered into a combination and conspiracy to monopolize trade and commerce in natural gas in the States of Indiana, Michigan and Ohio, and to prevent Missouri-Kansas Pipe Line Company from constructing the said pipe line and, failing that, to obtain control of the management and operation of Panhandle Eastern; and the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation (hereinafter referred to collectively as the "Columbia Companies"), having failed in their attempts to prevent the construction of the said Panhandle Eastern pipe line, purchased a half interest therein in the month of September, 1930, and obtained control of the management and operation of Panhandle Eastern by the means in said Amended Petition alleged; and that the said Columbia Companies in pursuance of said conspiracy caused Panhandle Eastern to fail and neglect opportunities to sell its gas to customers, including the Cities of Indianapolis, Kansas City, St. Louis and Detroit, as a result of which Missouri-Kansas Pipe Line Company was forced into receivership in the Chancery Court of Delaware; after which [fol. 531] defendants took steps and proceedings intended to assure the acquisition by them of the half interest in said Panhandle Eastern then held by the Receivers of Missouri-Kansas Pipe Line Company; all for the purpose of causing Panhandle Eastern Pipe Line Company to be wholly absorbed by the Columbia Companies, thus assuring to such companies a monopoly in natural gas in the potential markets of Indiana and Michigan.

V. The said Amended Petition prayed for a Decree adjudging, among other things, that the acquisition by the Columbia Companies of the said one-half of the capital stock of Panhandle Eastern was in violation of the Anti-Trust Laws; that the proposed acquisition of the remaining one-half be restrained as a further violation of the Anti-Trust Laws; that the defendants be enjoined from acquiring assets and from acquiring or voting securities of Panhandle Eastern and from exercising any dominion or control over Panhandle Eastern and that the defendant Columbia Oil & Gasoline Corporation be required to divest itself of all securities of Panhandle Eastern then owned or thereafter to be acquired by it.

VI. Thereafter and on the 29th day of January, 1936, pursuant to a consenting stipulation, a Decree of this Court was duly made and entered against all the defendants. Reference is made to said Decree and Stipulation as if herein fully and at length set forth. Said Decree, among other things, appointed Gano Dunn, Esq. as Trustee, and directed the defendant Columbia Oil & Gasoline Corporation to transfer to said Trustee within ten days thereafter all of its [fol. 532] stock then owned and thereafter all stock subsequently acquired in Panhandle Eastern Pipe Line Company, having present or potential voting rights, the said Trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof; upon certain terms and conditions therein in said Decree provided. The said Trustee was given the power of removal of any director of Panhandle Eastern nominated by said Columbia Oil & Gasoline Corporation. Said Trustee was further directed to report to the Court semi-annually and his compensation and disbursements were directed to be paid in equal shares by the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation on quarterly accounts to this Court. By said Decree property consisting of 100,000 shares of Class "A" preferred stock of Panhandle Eastern Pipe Line Company, 10,000 shares of Class "B" preferred stock of said company, and 404,326 shares of the common stock of said company were placed and now remain in the custody of said Gano Dunn as an officer of this Court and in the custody of this Court. All of said stock is now registered in the name of "Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree dated Jan. 29, 1936, in Cause No. 1099 in Equity in the United States District Court for the District of Delaware." Said stock constitutes the controlling stock of said Panhandle Eastern Pipe Line Company, which has assets of the value of upwards of \$50,000,000.

Said Decree contained various injunctive and other pro-[fol. 533] visions to which reference is hereby made as if they were here fully set forth.

VII. On December 21, 1938, the United States of America filed herein a Supplemental Complaint and a motion for leave to serve the same. Said motion was thereafter granted, and the defendants herein were on January 12,

1939 directed by order of this Court to answer the said Supplemental Complaint, and thereafter and on or about May 15, 1939 the defendants filed their respective answers thereto.

—VIII. Said Supplemental Complaint, to which reference is hereby made as if herein fully and at length set forth, alleged in part as follows:

“The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this court for approval of a suitable plan or plans to accomplish such divestiture. * * *” Said Supplemental Complaint prayed as follows:

“A. That this honorable Court exercise the jurisdiction retained by it in Section V of said decree of January 29, 1936, for the purposes therein stated, to wit, to give full effect to said decree and to make such other and further orders and decrees and to take such action as may be necessary to the carrying out thereof, and enter a judgment herein to the following effect:

[fol. 534] 1. Adjudging that, in order to achieve the declared primary purpose of said decree of January 29, 1936, namely, to restore Panhandle Eastern to, and maintain Panhandle Eastern in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, it is necessary to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern.

2. Adjudging that plaintiff has the right to such further relief in this action as may be necessary to give full effect

to said decree of January 29, 1936, and to carry out the purposes thereof.

3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, either by disposing of all interest which it may have in any stock of any class having present or potential voting rights in Columbia Oil, or by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern; and, to that end:

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this Court for approval, through the trustee for sale constituted in accordance with subsection 4 of this section III, a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this Court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a) of this subsection 3, a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Reconstituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, with the powers and duties, and subject to the conditions, set forth in said decree of January 29, 1936, and with the further duties of (1) formulating and submitting to this [fol. 535] Court for approval a plan for the sale or other disposition by Columbia Oil of all interest which it may have in any stock of Panhandle Eastern, (2) receiving, examining and transmitting to this Court with a recommendation for approval or disapproval, any offer which may be submitted by any person for the purchase of any securities in which Columbia Oil may have an interest or of which Columbia Oil may be the issuer, and any plan submitted by Columbia Oil for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern, pursuant to paragraph (a) of subsection 4 of this section III, and (3) selling or otherwise disposing of such stock in accordance with such a plan or offer ap-

proved by this Court and in accordance with any further order of this Court relating thereto;

(b) To provide that the term of appointment of the person designated as said trustee for sale shall expire not later than two years from the date of entry of judgment herein, and that such person shall not be subject to reappointment as such trustee; and

(c) To empower said trustee to employ such accountants, engineers, appraisers or other technicians and experts as may be necessary to assist him in discharging his duties.

B. That plaintiff have such other and further relief as to this Court may seem proper."

IX. On or about June 20, 1939, defendants Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation filed in this cause a proposed Plan for compliance with said Decree of January 29, 1936, and a motion for approval of the Plan and for modification of said Decree "to meet the changed conditions resulting from the carrying out of such Plan" if approved. Said motion and Plan contemplate, among other things, the disposition and retransfer by said Trustee to Columbia Oil & Gasoline Corporation of all stock of Panhandle Eastern Pipe Line Company held by him as such Trustee as aforesaid, and the discharge of such Trustee.

[fol. 536] X. Upon the said motion this Court made an order on June 20, 1939, setting down the said motion for hearing on July 10, 1939, directing that the Clerk of this Court give notice of said hearing to Missouri-Kansas Pipe Line Company, among others, in order that at such hearing Missouri-Kansas Pipe Line Company might appear and be heard to such extent as the Court should then determine. Said order further provided: "Nothing herein contained shall be construed as recognizing the right of * * * Missouri-Kansas Pipe Line Company to intervene herein or become a party hereto". Said order, motion and plan were served upon Missouri-Kansas Pipe Line Company on June 23, 1939. They are made a part hereof by reference as if here fully set forth.

XI. Notwithstanding the expressed purposes and provisions of said Decree of January 29, 1936, the defendants Columbia Gas & Electric Corporation and Columbia Oil

& Gasoline Corporation now have and exercise effective control of Panhandle Eastern Pipe Line Company. Said Columbia Companies are in effect identical in respect of management and control. In order that the declared purposes of said Decree may be realized, it is necessary that said Decree be supplemented by a further order requiring the elimination of said Columbia Companies from control or influence over said Panhandle Eastern Pipe Line Company by divestiture of their stock holdings therein by such means as the Court shall deem effective to such end.

[fol. 537] XII. The Plan proposed by the Columbia Companies as aforesaid would vest permanent control of Panhandle Eastern Pipe Line Company in Columbia Oil & Gasoline Corporation, the controlling stockholders of which (including certain officers and directors of Columbia Gas & Electric Corporation, their personal holding companies, and New York United Corporation), are also the controlling stockholders of Columbia Gas & Electric Corporation. Said Columbia Oil & Gasoline Corporation would be freed from the injunctive provisions of said Decree. Said plan would in no respect fulfill the declared purposes of said Decree.

XIII. Missouri-Kansas Pipe Line Company, the Applicant above named, is the same corporation by that name mentioned and referred to in said Amended Petition of the United States in this cause, and in the Stipulation incorporated in said Decree. It is substantially interested in the subject matter of this suit and its interests are affected by this suit and by the said Decree herein and will be further affected by the further proceedings to be had in this Court pursuant to the said Supplemental Complaint of the United States and the said Motion and Plan filed on June 20, 1939, as aforesaid, by reason of the following:

(1) The principal asset of Applicant is its common stock of Panhandle Eastern Pipe Line Company, amounting to 324,326 shares of the 728,652 common shares outstanding. Said common stock owned by Applicant is of a value of many millions of dollars and constitutes all the outstanding stock of Panhandle Eastern Pipe Line Company except [fol. 538] that which is beneficially owned by Columbia Oil & Gasoline Corporation, as aforesaid, the legal title to which is held by said Gano Dunn, as Trustee as aforesaid.

(2) Applicant has an interest in and is so situated as to be vitally affected by the disposition of the said property in the custody of this Court and of its officer as aforesaid, and will be adversely affected if said Plan should be approved and said motion granted, and unless said disposition is made to parties wholly independent of and disconnected with any of the defendants herein.

(3) Applicant will be injured in its property unless said Panhandle Eastern Pipe Line Company is freed from all control by the Columbia Companies and is maintained in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with the Columbia Companies and others, as contemplated by said Decree, in order that said Panhandle Eastern Pipe Line Company may market its vast reserves of natural gas freed from any restraint from said Columbia Companies.

XIV. The representation of the interest of Missouri-Kansas Pipe Line Company by the plaintiff herein is or may be inadequate and Missouri-Kansas Pipe Line Company will be bound by the judgment in this cause.

XV. Applicant alleges that it is entitled to intervene herein and be heard as a party to this cause on any hearing upon the said Plan and Motion of the Columbia Companies and on any other Plan that may hereafter be filed.

[fol. 539] Wherefore, Applicant Missouri-Kansas Pipe Line Company prays:

1. For an order granting to it leave to intervene herein;
2. That the proposed Plan and Motion of the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, dated June 20, 1939, be disapproved and denied;
3. That this honorable Court supplement its Decree of January 29, 1936, herein by such order as to it may seem proper for the accomplishment of the declared purposes of said Decree by the divestiture of all ownership of the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation of securities of Panhandle Eastern Pipe Line Company.

4. That such other and further relief be granted as to this honorable court may seem just and equitable.

And the Applicant will ever Pray.

Missouri-Kansas Pipe Line Company, by (Sgd.)
A. M. James, Assistant Secretary, Petitioner.
(Corporate Seal.) (Sgd.) Stewart Lynch, Solicitors for Petitioner.

[fol. 540] *Duly sworn to by A. M. James. Jurat omitted in printing.*

[fol. 541] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION BY MISSOURI-KANSAS PIPE LINE COMPANY FOR LEAVE TO INTERVENE—Filed July 10, 1939

And now, to wit, this 10th day of July, A. D. 1939, this cause having come on to be heard upon the motion of Missouri-Kansas Pipe Line Company for leave to intervene in this proceeding, after hearing counsel for the respective parties, upon consideration thereof,

It is Ordered by the court that said motion be and hereby is denied without prejudice to the right of the said Missouri-Kansas Pipe Line Company to be heard amicus curiae on questions of law and fact in regard to the fairness and effectiveness of the proposed plan filed herein June 20, 1939, by Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, two of the defendants in this cause, and for a modification of the decree entered in this cause, January 29, 1936, and referred to as the "consent decree."

(Sgd.) John P. Nields, J.

[fol. 542] IN UNITED STATES DISTRICT COURT

ORDER APPOINTING SPECIAL MASTER—Filed July 10, 1939

And now, to-wit, this 10th day of July, A. D. 1939, this cause having come on to be heard pursuant to the order entered herein on the 20th day of June, A. D. 1939, upon

the motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, two of the defendants in said cause, for an order providing that the consent decree entered in this cause January 29, 1936, be modified as in said motion set forth, and in accordance with the terms of a certain Proposed Plan in said motion set forth, it is

Ordered by the Court that this proceeding be and hereby is referred to William Prickett, Esq., of Wilmington, Delaware, as Special Master, with the usual powers of Special Masters in Equity, to consider the said motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation above referred to, and the proposed modifications of the said consent decree in said motion set forth, and to take testimony, hear arguments of counsel, and make report to this Court of his findings of fact, conclusions of law and recommendations concerning the said motion and said Proposed Plan.

It is Further Ordered by the Court that the said Special Master shall forthwith proceed from day to day with the hearings herein directed to be held, and shall report to the Court as above directed with all possible speed and not [fol. 543] later than five days after the conclusion of the hearings. The Special Master shall embody such findings, conclusions and recommendations in a report to be filed with the Clerk of this Court, and shall give written notice of such filing to the parties. Exceptions by any party to any finding or recommendation contained in the report of the Special Master shall be in writing and filed with the Clerk of this Court within ten days after the date of the filing of such report.

It is Further Ordered by the Court that the City of Detroit, a municipal corporation of the State of Michigan, the City of Toledo, a municipal corporation of the State of Ohio, and Missouri-Kansas Pipe Line Company, a corporation of the State of Delaware, shall be permitted by the Special Master to appear at the hearings before said Special Master as amici curiae but not as intervenors.

(Sgd.) John P. Nields, J.

[fol. 544] IN UNITED STATES DISTRICT COURT

OPINION OF WILLIAM PRICKETT, SPECIAL MASTER—Filed July
29, 1939

Questions Not Considered

The following questions have not been considered.

I. Whether the exchange of 400,000 shares of preferred stock of Columbia Oil by Columbia Gas for the assets and liabilities of the five subsidiaries of Columbia Oil is fair, either from the point of view of Columbia Oil or that of Columbia Gas, that being a question for the boards of the two companies to decide.

II. The amount of the "actual investment" of Columbia Gas in Michigan Gas and Indiana Gas, this being the figure at which, under the plan, Panhandle Eastern may take over these two companies from Columbia Gas. This question was excluded, first, because its determination was not urged by the Government and was objected to by Columbia Gas and Columbia Oil; second, unless Panhandle Eastern should exercise its option to buy at Columbia Gas's "actual investment", there will be no necessity to decide either what the term, "actual investment" means or what the actual investment at the time of the exercise of the option will be; third, because the investment varies from time to time depending on the amount of advances by Columbia Gas to Michigan Gas and Indiana Gas and the repayments by these two companies to Columbia Gas at the time in question; last, because it was apparently a question of considerable difficulty and the reference to me required a report at a very early date.

Assumptions

I have approached consideration of the questions referred to me on the basis of the following assumptions:

I. Panhandle Eastern should not be dominated or controlled directly or indirectly by Columbia Gas and Panhandle Eastern should be maintained in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others. This is the purpose recited in the consent decree

in this proceeding and I understand that what I am to decide is whether the motion and plan will, in my opinion, accomplish that purpose.

Hereafter when the word "plan" is used, it is intended to refer to both the "motion" and the "plan".

II. In view of events before and after the entry of the consent decree, any plan proposed by Columbia Gas and Columbia Oil is to be the subject of scrutiny; before recommending that the plan be accepted, it must appear to me that the plan will accomplish the purpose of the decree.

III. The burden of showing that their plan will accomplish [fol. 546] this purpose is on the proponents, Columbia Oil and Columbia Gas.

IV. The present consent decree remains unaffected so far as Burt R. Bay and John H. Hillman, Jr., defendants in the consent decree, who have not joined in the present motion and plan, are concerned.

Opinion

In the Government's amended complaint filed December 21, 1939, in substance, there are proposed one of two alternatives, either that Columbia Gas divest itself of control of Columbia Oil or that Columbia Oil divest itself of Panhandle Eastern. The proposed plan adopts the first alternative. The plan will accomplish the intended result if Columbia Oil is completely freed from the influence of Columbia Gas or, if the influence is to continue, it is rendered harmless.

The main features of the plan have been summarized in connection with the findings.

I. Injunctions

The plan contains various provisions for injunctions against the defendants doing certain things, among others, participating in or exercising any direction or control over the management of Columbia Oil, Panhandle Eastern, and if Columbia Gas sells its interest in Michigan Gas, of that company.

The consent decree also contained elaborate injunctive provisions, forbidding the defendants from exercising any

domination or control over Panhandle Eastern. In spite of these provisions, however, this influence and control has [fol. 547] apparently persisted, resulting in the renewed complaints of the Government. So I conclude that the injunctions alone were not, and will not, be effective, to prevent the abuses complained of.

Consequently I disregard the injunctive provisions and look further to see whether the other provisions of the plan will probably be effective to accomplish the desired result.

II. Disposition of the Gossler Stock

Philip G. Gossler was for a long time President of Columbia Gas, is now Chairman of its board and is the largest individual stockholder of Columbia Oil, holding 75,872 shares of its common stock; the plan provides that within five years he shall sell all his Columbia Oil stock and in the interval shall not vote it.

In addition, however, to the Gossler stock, there remains Columbia Oil stock held by the following persons, who, on account of their immediate connections with Columbia Gas would, it may be assumed, put the interests of that company ahead of those of Columbia Oil; these persons are not defendants in this action and so are not subject to any decree which may be made:

Phillip G. Gossler	75,872 shares
Mrs. Gossler	2,385 "
Mrs. Katherine Clay, daughter of Mr. Gossler	30,358 "
[fol. 548] United Corporation and its subsidiary, New York United Corporation, which, together are the holders of 28% of the common stock of Columbia gas ..	84,766 "
The estate of George W. Crawford, a former defendant in this action and a former president and Chairman of the Board of Columbia Gas	50,799 "
The Estate of E. W. Edwards, the second largest stockholder of Columbia Gas and a director of that company until 1938	25,009 "

Present officers and directors of Columbia Gas:

		shares
W. C. Beckjord	400	"
W. W. Freeman	48	"
D. E. Mitchell	27	"
H. J. Newmann	222	"
J. G. Pew	4,088	"
T. W. Phillips	200	"
S. Y. Ramage	4,261	"
H. A. Wallace and his children	2,296	"
C. I. Weaver	600	"
Charles H. Munroe, and Thomas R. Weymouth, defendants in this action	816	"
James M. Hutton	9,600	"
	<hr/> 291,747	"

The holdings of these persons amount to twelve per cent plus of the 2,336,826 shares of Columbia Oil outstanding. If Mr. Gossler's stock is eliminated from voting, as it would be under the plan, these holdings total 215,875 or about nine per cent.

[fol. 549] The questionnaire, on which the evidence of the holdings of the persons enumerated above were based, purported to cover only the persons named in Columbia Oil Exhibit 2 and members of their immediate family living with them; no attempt was made to show the holdings of persons, such as close relatives, not living in the same house, friends or business associates, not included in this narrow classification but who might be expected to follow the wishes, advice or example of the persons whose stock holdings were disclosed. I do not imply that it would have been possible to submit data showing such holdings but, the burden being on the proponents of the plan, I am not willing to assume that such persons, who might vote their stock in favor of Columbia Gas rather than Columbia Oil where there was a conflict of interest, do not hold a substantial amount.

There is not included in the tabulation above the stock held in the "Street" names of Coggeshall and Hicks, Gude, Winmill and Company, Jesup and I amont, or W. E. Hutton and Company, except the stock actually owned by J. F. Hutton though the holdings of these brokers appeared in Columbia Oil Exhibit 2 and Missouri-Kansas argues that on

account of the close connection between these firms and Columbia Gas, it would be reasonable to assume that much of the stock in these names might be voted in the interests of Columbia Gas, which may be true. If such an assumption were accepted, 113,517 shares would be added to the holdings listed above, making a total of 329,392 shares, excluding Mr. Gossler's.

[fol. 550] The Columbia Oil stock was originally distributed by Columbia Gas in 1930 as a dividend to its common stockholders and, at the present time, sixty-eight per cent of the 28,000 odd Columbia Oil stockholders own common stock of Columbia Gas. As no evidence was presented of how many Columbia Oil stockholders own other Columbia Gas securities, either preferred stocks or debentures, I cannot make even a guess as to this.

The percentage necessary to constitute a quorum for meetings of stockholders of Columbia Oil is thirty-three and one-third per cent of the stock outstanding or 778,942 shares, so that 389,472 shares would constitute a majority of a meeting with a quorum present. In dissolution proceedings under the anti-trust law, it has been held that the mere distribution of stock in the competing companies into which the corporation was dissolved, was sufficient to insure the effectiveness of the decree even though the individuals receiving stock in the various companies were identical. However, in this case, if the plan had to depend for its effectiveness on disposal by persons connected with Columbia Gas of their holdings in Columbia Oil, I think that the Gossler holdings, which amount to only three per cent would not be enough and that the Government would be right in its insistence that the United Corporation, Mrs. Clay, the Edwards estate and the other directors of Columbia Gas in addition to Mr. Gossler should divest themselves of their Columbia Oil stock.

I do not decide whether this feature of the plan would be effective if its proponents should be able to meet this [fol. 551] demand of the government, since no such undertaking was included in the plan.

So I conclude that the provision of the plan, which provides for the divestiture of his stock interest in Columbia Oil by Mr. Gossler, cannot be regarded as certain to accomplish the purpose of the consent decree.

III. Termination of the Trust

At present the trust created by the consent decree holds the two classes of preferred stock and the 404,326 shares of common stock of Panhandle Eastern owned by Columbia Oil, and exercises the voting rights of these shares to elect six of Panhandle Eastern's nine directors. Under the plan, the trust will be terminated, all Panhandle Eastern stock returned to Columbia Oil, one class of preferred stock used by that company as a source for raising funds from parties not connected with Columbia Gas in order to reduce its debentures held by Columbia Gas and Columbia Oil will continue to hold the other class of preferred and the common. As to termination of the trust, the Government seems to regard it as having turned out to be unsatisfactory as a method of neutralizing Columbia Gas influence and the plan discards it so no question arises about the necessity of continuing it. As to disposition of \$10,000,000 par of Panhandle Eastern A preferred stock to buyers not connected with Columbia Oil as a means for raising money to reduce Columbia Oil's debenture debt to Columbia Gas, the reduction of the debentures will be discussed below. As to the sale of the Panhandle Eastern preferred stock to an outsider, Missouri-Kansas' argument is that Columbia [fol. 552] Oil should have no ties whatever with Panhandle Eastern; certainly anything which diminishes the connection between them is unobjectionable. As to the voting rights of the stock which Columbia Oil will keep, the danger in this situation is intended to be neutralized by the provisions of the plan which deal with the choice of directors and will be considered in that connection.

IV. Exchange of Columbia Oil Preferred Stock for All Its Assets Outside of Its Panhandle Holdings

Columbia Gas is to exchange Columbia Oil's preferred stock, which elects two directors, for substantially all Columbia Oil's assets except its holdings of Panhandle Eastern securities. This exchange seems to be effective as far as it goes, and no criticism has been directed at it in this proceeding.

V. Payment by Columbia Oil on Account of Its Debentures

Columbia Gas now holds \$21,000,000 of Columbia Oil's debentures; this amount is to be reduced to \$11,000,000 by

a payment to Columbia Gas of \$10,000,000, to be raised by Columbia Oil. If, for any reason, Columbia Oil is not able to raise this amount, I assume that the plan will fail as this is an essential feature of it. Columbia Gas is to continue to hold \$11,000,000 of Columbia Oil's debentures, and if it were not for other features of the plan, the fact that Columbia Oil owned Columbia Gas this very large amount might subject the former to the latter's influence. However, the veto power over the election of the Columbia Oil directors to be exercised by the Department of Justice, a feature of the plan discussed below, ought to neutralize this possibility. So I conclude that the continued holding of \$11,000,000 of Columbia Oil's debentures by Columbia Gas, when coupled with the provisions against acquisition of Panhandle Eastern securities by Columbia Gas upon default by Columbia Oil and sale of its assets, does not prevent the plan from accomplishing the result intended by the consent decree. Missouri-Kansas seemed to be concerned over what it regarded as a probability that Columbia Oil would not be able to meet the sinking fund requirements of its debentures. The debenture indenture does not absolutely require payment into the sinking fund and it seems to me that its provisions prevent a default if Columbia Oil cannot make the stipulated payments. I must add, however, that I would be better satisfied if the plan could include a provision that Columbia Gas should dispose of those debentures within a specified time.

VI. Resignation of Columbia Oil Officers and Directors, to be Replaced by Persons Approved by the Department of Justice; Adoption of an Amendment by Columbia Oil Stockholders that for Five Years Directors Shall be Approved by that Department

The provisions of this phase of the plan as amended are that, on the entry of the decree, all the officers and directors shall resign and be replaced by persons not objectionable to the Department of Justice; thereafter that an amendment to Columbia Oil's certificate of incorporation shall be adopted by its stockholders dividing the directors into [fol. 554] classes and apparently providing that for five years from the date of the order approving the plan, no person shall be qualified to serve as a director of Columbia Oil who shall not have been approved by the Department of Justice; that the directors of Panhandle Eastern repre-

senting Columbia Oil shall be chosen from the directors of Columbia Oil.

As to the resignation of the Columbia Oil officers and directors, the only objection suggested is that the present incumbents may refuse to resign. No evidence is offered to show that they will not and counsel for the proponents say that they are informed that they will. This imagined obstacle does not seem serious. The other feature of this phase of the plan, that during five years the stockholders may elect as directors only persons approved by the Department, is more difficult.

The choice of the Columbia Oil directors who, in turn, will choose its representatives on the board of Panhandle Eastern is the crucial point of the plan and on it depends whether the plan will effectively accomplish the purpose of the consent decree.

Is approval by the Government of the Columbia Oil directors sufficient to ensure the result intended by the consent decree; if so, is this feature practicable?

As to the first question, it seems to me that the veto power retained by the Department of Justice ought to make it certain that directors in harmony with the recited purpose of the consent decree will be elected; if they are, Columbia Oil ought to be free from the influence of Columbia Gas [fol. 555] and consequently Panhandle Eastern ought to be able to compete freely with Columbia Gas. This whole proceeding has been brought by the Department of Justice, which is a part of the executive branch of the Government, charged with the duty of seeing that the laws, including anti-trust laws, are enforced. I, at least, cannot assume that the Government will allow itself to be hoodwinked or lulled into obliviousness by Columbia Gas, especially while it has Missouri-Kansas to keep it alert and to prod it into activity, even if the latter's description of the anti-trust division of the Department of Justice as "a weary government" is accepted.

So it seems to me that if my interpretation of the plan and the effect of retention of jurisdiction by this court, points to which I shall come, is correct, the continued supervision of the persons to be elected as directors of Columbia Oil to be exercised by the Department of Justice ought to be sufficient to make certain that the plan accomplishes the purpose of the consent decree.

This brings up the last question. Is this feature prac-

ticable, can it be put into operation under the General Corporation Law of Delaware, Columbia Oil being a corporation organized under the laws of that state?

Missouri-Kansas says that it cannot and devoted a large part of its oral argument and its brief to this point. Its arguments can be roughly summarized in this way: The right to vote one's stock as one pleases is an inherent attribute of ownership of stock; the stockholders of Columbia Oil are not parties to this action and the right of each individual stockholder to vote for any director that he wants [fol. 556] to vote for cannot be taken away from him in this proceeding. So each stockholder can vote for a director not approved by the Department of Justice and consequently the whole body of stockholders can do so; therefore, the right of the stockholders of Columbia Oil to choose as their directors whomever they please cannot be affected in this action and the Columbia Oil stockholders can disregard the provision of the plan and the plan which depends on this feature for its effectiveness must fail. Or if this feature of the plan is to be accomplished by amendment of Columbia Oil's certificate of incorporation, it would not be binding even on those assenting to it and certainly not on non-assenters.

As to the first argument, it proceeds on the assumption that the court by its decree will deprive the Columbia Oil stockholders of their right to vote without any consent on their part to such a proceeding. This overlooks the fact that the plan specifically requires consent of the stockholders in the form of adoption of an amendment agreeing to such a limitation on their rights.

As to the second point, it seems to me that this argument overlooks some of the important facts.

The prayer of the supplemental complaint of the government filed in December 1938 was either that Columbia Oil and Columbia Gas be separated from Panhandle Eastern or that Columbia Gas be separated from Columbia Oil, which then might continue its interest in Panhandle Eastern. It must be admitted that the first alternative would be much simpler from a procedural point of view, would [fol. 557] be sure to accomplish the result intended by the consent decree and would be acceptable to the government. Yet the directors of Columbia Oil chose to try to separate Columbia Oil from Columbia Gas rather than to separate Columbia Oil from Panhandle Eastern. It seems to me

that two explanations of their decision are possible. Missouri-Kansas would say that they chose this method with its complicated procedure and what Missouri-Kansas insists is its uncertain result, so that Columbia Gas may continue to influence Panhandle Eastern in the future as it has in the past. The answer to this explanation is that this Court and the Government have the responsibility of deciding now that this outcome is not possible and the means of making certain that it does not, in fact, result. The other explanation, which I assume is correct, is that the Columbia Oil directors realized that the retention of the Panhandle Eastern stock would be a very much more profitable solution for the Columbia Oil stockholders than its disposal and so they chose this method. This is an assumption only, since no testimony was offered as to why this alternative was adopted.

The plan contemplates that the necessary corporate action shall be taken to ensure the carrying out of the plan and it seems to be assumed that this probably requires an amendment of the certificate of incorporation by the inclusion of provisions that for five years only such persons may be elected directors who shall have been approved by the Department of Justice. Pending the adoption of such an amendment, no final decree is to be entered, and of course, if the necessary number of Columbia Oil stockholders refuse to adopt the amendment, the plan fails. [So [fol. 558]. far there is no difficulty.

But Missouri-Kansas says that even though the majority of the Columbia stockholders adopts the proposed amendment, such action cannot bind the dissenting minority, the assignees of the assenting majority and perhaps is not even binding on the assenting stockholders, themselves, and cites numerous cases supporting its argument. I have looked at these cases and attach to this opinion a brief examination of them and of the cases cited by the proponents.

I do not think that the conclusion of Missouri-Kansas is justified. The majority of the stockholders of a Delaware corporation under the Delaware Corporation Law as construed by the Courts of that state can go very far in binding the minority. Here the choice before the stockholders is whether they will consent to the exercise by the Department of Justice of a veto power over their choice of directors, and by this compliance on their part, enable their

corporation to retain for their benefit its Panhandle Eastern stock, presumably valuable; if they refuse, their company will face a continuation of this litigation with the possibility of being subjected to heavy fines and a decree requiring the immediate disposal of its Panhandle Eastern holdings at no matter what sacrifice.

It must be remembered that the majority would be voting to subject the rights of all stockholders to select directors, including their own, to a veto by the Department of Justice; so far as the record before me discloses, the majority would not be actuated by fraud or any other corrupt motive and would not be seeking to acquire for themselves an advantage [fol. 559] over the non-assenting minority.

Consequently it seems to me that in spite of the general principle that stockholders shall elect their own directors and the provisions of the General Corporation Law of Delaware to this effect, under the circumstances existing here, the majority of the Columbia Oil stockholders ought to be able to take appropriate corporate action to make effective that feature of the plan by which, for five years, Columbia Oil directors, elected by the stockholders, must be approved by the Department of Justice.

If I am wrong in this conclusion and it should be held by the courts of Delaware that the majority of stockholders could not effectively take such action, I interpret the provision of the plan by which jurisdiction is retained to mean that this court will be able to proceed with the case and, if the Government proves its complaint, require Columbia Oil to divest itself of its Panhandle Eastern, and Columbia Gas of its Michigan Gas Transmission, holdings.

VII. Panhandle Eastern's Option to Buy Michigan Gas Transmission Corporation

The only criticism of the features of the plan which provide for an option under which Columbia Oil may buy Michigan Gas and Ohio Gas was directed at the use of the phrase, "actual investment", in describing the price to be paid Columbia Oil if the option were exercised. It seemed to me that the phrase was as good as any other description, short of actually ascertaining the price to be paid in dollars and cents, which could not be done as Columbia Gas' investment [fol. 560] in the property fluctuates from day to day. For this and the other reasons already stated, I did not go into the question. The other provisions of this phase of the plan

seem to me to be fair and reasonably calculated to give Panhandle Eastern an opportunity to acquire the pipe line to Detroit, or if Panhandle Eastern cannot does not want to, then to make certain that it does not remain in the hands of Columbia Gas.

VIII. Retention of Jurisdiction

The plan provides in substance that jurisdiction should be retained to enforce strict compliance with the decree, to take "*such other action as may be necessary from time to time*" and to require the resignation of any officer or director of Columbia Oil if necessary.

A serious question might be raised as to whether this Court could exercise effective jurisdiction over an absent director or officer of Columbia Oil, not a party to this cause, to compel him to resign if he refused to do so. I interpret the italicized quotation to mean that if any such situation arose, or if, as already suggested, it should be held by the courts of Delaware that the corporate action by Columbia Oil stockholders contemplated by the plan was ineffective, then this Court might proceed to enter any decree against the defendants before it which the facts required, unaffected by the attempt made by an order approving this plan to accomplish the results intended by the consent decree without imposing unnecessary hardship on the defendants. If I am wrong in this interpretation of the meaning [fol. 561] and effect of the provision and if the court should believe that possible situations, such as those referred to, should be provided for, then it is respectfully suggested that this part of the plan might perhaps be enlarged.

Respectfully submitted, (Sgd.) William Prickett,
Special Master.

July 29, 1939.

[fol. 562] IN UNITED STATES DISTRICT COURT

SUMMARY OF PLAN, FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATIONS BY SPECIAL MASTER—Filed July
29, 1939

The Plan Summarized

The present motion and proposed plan depend for their effectiveness on various means which may be roughly summarized as follows:

I. Injunctions prohibiting Columbia Gas and the individual defendants, other than Bay and Hillman, from owning or voting Panhandle Eastern securities and, if Columbia Gas shall sell its investment in Michigan Gas Transmission, any Michigan Gas securities; prohibiting Columbia Gas from owning or voting Columbia Oil securities with the principal exception of \$11,000,000 of Columbia Oil debentures; from controlling Columbia Oil, Panhandle Eastern and, if the investment of Columbia Gas in Michigan Gas is disposed of, then from controlling Michigan Gas; prohibiting the same individual defendants from acquiring or voting securities of Columbia Oil in addition to those now owned by them, participating in its management or that of Panhandle Eastern and, if the investment of Columbia Gas in Michigan Gas is disposed of, then from participating in that of Michigan Gas.

II. Sale within five years by P. G. Gossler of his Columbia Oil holdings and an injunction against his voting such stock in the interval until it has been disposed of.

[fol. 563] III. Termination of the trust under which the trustee holds Panhandle Eastern stock for Columbia Oil and transfer of these securities to Columbia Oil.

IV. Surrender by Columbia Gas to Columbia Oil of 400,000 shares of Columbia Oil preferred stock, being all of the issue of that stock, in return for substantially all the assets of Columbia Oil other than its Panhandle Eastern holdings and cash.

V. Reduction by Columbia Oil of its debentures aggregating \$21,000,000, held by Columbia Gas, to \$11,000,000 by payment by Columbia Oil to Columbia Gas of \$10,000,000 to be raised by Columbia Oil through financing with persons having no connection with Columbia Gas; on default on the balance of such debentures remaining outstanding, Columbia Gas shall not acquire control of any Panhandle Eastern securities.

VI. The officers and directors of Columbia Oil shall resign and be replaced by persons not objectionable to the Department of Justice; subject to the necessary authorization by Columbia Oil's stockholders, for five years, di-

rectors, elected by Columbia Oil stockholders, shall be persons acceptable to the Department of Justice.

VII. Panhandle Eastern shall have an option to buy the stock and indebtedness of Michigan Gas and Indiana Gas owned by Columbia Gas, to be exercised within one year from the entry of a final decree in this proceeding, at a price equal to Columbia Gas's actual investment therein, if Panhandle Eastern also buys a pipe line of Ohio Fuel Gas Company in Indiana for \$355,191. If, during that [fol. 564] year, Columbia Gas receives from sources, not connected with Columbia Gas, a satisfactory offer to purchase such stock and indebtedness, Columbia Gas will give Panhandle Eastern an opportunity to meet such terms within ninety days. If, within that period, Panhandle Eastern does not meet such offer, Columbia Gas may accept it. If no such sale has been made within the year following the decree, a trustee shall be appointed to make such sale to any purchaser not connected with Columbia Gas for a price not less than Columbia Gas's actual investment therein, unless Columbia Gas consents to a lesser price.

VIII. Jurisdiction of the cause is to be retained by this Court to compel compliance with the decree.

Findings of Fact and Conclusions of Law

I. Columbia Gas and Electric Corporation

Columbia Gas is a large company, holding the stocks of more than fifty operating public utility subsidiaries serving Ohio and Territory east of that state.

A. Capitalization

The capitalization of Columbia Gas is immaterial in this proceeding.

B. Its holdings in corporations involved in this proceeding

(1) In Columbia Oil:

a. \$21,000,000 principal amount of debentures, entire outstanding issue, due February 1, 1956.

b. 400,000 shares preferred stock, entire issue; elects minority of board.

[fol. 565] c. No common stock.

(a) In Michigan Gas:

- a. All of its debt, approximately \$6,170,500.
- b. 44,800 shares common stock, entire issue; carried on Columbia Gas books at \$2,379,500.

(3) In Panhandle Eastern Pipe Line Company:

- a. None.

II. Columbia Oil and Gasoline Corporation

This company was formed in 1930 to segregate the oil and gasoline production and distribution properties then owned by Columbia Gas from its public service properties; voting trust certificates for the common stock of Columbia Oil were distributed in that year to Columbia Gas common stockholders on the basis of one share of Columbia Oil for five shares of Columbia Gas held; the voting trust was terminated in 1936 after the consent decree and common stock issued for voting trust certificates as they were turned in.

A. Capitalization:

(1) \$21,000,000 principal amount of debentures due February 1, 1956, entire issue held by Columbia Gas.

(2) 400,000 shares of preferred stock, entire issue held by Columbia Gas, electing a minority of Columbia Oil's directors.

(3) 2,336,826 shares of common stock without par value, electing a majority of Columbia Oil's directors.

[fol. 566] B. Holdings in corporations involved in this proceeding:

(1) In Columbia Gas: a. None.

(2) In Panhandle Eastern:

a. 100,000 shares of Class A preferred stock, entire issue, no vote, now in name of Dunn, Trustee.

b. 10,000 shares of Class B preferred stock, entire issue, elects two directors, now in name of Dunn, Trustee.

c. 404,326 shares of common stock out of 728,652 shares outstanding, now in name of Dunn, Trustee; warrants for 80,000 shares are to be distributed to the stockholders of Missouri-Kansas; this company owns the balance of the outstanding common stock, 324,326 shares. Common stock

held by Columbia Oil elects four Panhandle Eastern directors, common stock held by Missouri-Kansas, three.

(3) In Michigan Gas: a. None.

C. Assets:

(1) Five wholly owned subsidiaries engaged in producing, refining and marketing oil and gasoline.

(2) Its Panhandle Eastern holdings.

(3) Cash and unimportant miscellaneous items.

III. Panhandle Eastern Pipe Line Company

A. Capitalization:

(1) \$23,012,000 principal amount of bonds in hands of public.

(2) 100,000 shares of Class A preferred stock; no vote, entire issue beneficially owned by Columbia Oil but now in [fol. 567] name of Dunn, Trustee.

(3) 10,000 shares of Class B preferred stock; entire issue; elects two directors; beneficially owned by Columbia Oil; stock now in name of Dunn, trustee.

(4) 728,652 shares of common stock. Warrants representing 80,000 shares of common stock are to be distributed to stockholders of Missouri-Kansas. Columbia Oil owns 404,326 shares of Panhandle Eastern common stock. Missouri-Kansas 324,326 shares. Dunn acting for Columbia Oil elects four, and Missouri-Kansas three, directors.

B. Stock holdings in companies involved:

(1) In Columbia Gas: None.

(2) In Columbia Oil: None.

(3) In Michigan Gas: None.

C. Assets:

The substantial asset of Panhandle Eastern is a pipe line from natural gas fields in Texas and Kansas across those two states, Missouri and Illinois, to the Illinois-Indiana state line.

IV. Michigan Gas Transmission Corporation

A. Capitalization:

(1). Debt, approximately \$6,170,500, all owned by Columbia Gas.

(2) 44,800 shares of common stock, all owned by Columbia Gas, carried on its book at approximately \$2,379,500.

[fol. 568] B. Holdings in companies involved:

(1) In Columbia Gas and Electric Corporation: None.

(2) In Columbia Oil and Gasoline Corporation: None.

(3) In Panhandle Eastern Pipe Line Company: None.

C. Assets:

Its substantial assets consist of a pipe line from the eastern end of the Missouri-Kansas pipe line at the Illinois-Indiana border and from there across Indiana, Ohio and Michigan to Detroit and another pipe line branching off from this line near Zanesville, Indiana, and running through Indiana about seventy-five miles to a point near Muncie, Indiana, where it connects with lines of the Ohio Fuel Gas Company.

V. Persons, who presumably have interest in or associations with Columbia Gas, who have large holdings in Columbia Oil:

Philip G. Gossler	75,872 shares
Mrs. Gossler	2,385 "
Mrs. Katherine Clay, daughter of Mr. Gossler	30,358 "
United Corporation and its subsidiary, New York United Corporation, which together are the holders of twenty-eight per cent of the common stock of Colum- bia Gas	84,766 "
The estate of George W. Crawford, a former defendant in this action and a former president and chairman of the board of Columbia Gas	50,799 "
[fol. 569] The estate of E. W. Edwards, the second largest stockholder of Co- lumbia Gas and a director of that com- pany until 1938	25,009 "

Present officers and directors of Columbia Gas:

	shares
W. C. Beckjord	400 "
W. W. Freeman	48 "
D. E. Mitchell	27 "
A. J. Newmann	222 "
J. G. Pew	4,088 "
T. W. Phillips	200 "
S. Y. Ramage	4,261 "
H. A. Wallace and his children	2,296 "
C. I. Weaver	600 "
Charles H. Munroe and Thomas R. Weymouth, defendants	816 "
James F. Hutton	9,600 "

291,747 shares

The holdings of the persons enumerated amount to twelve per cent plus of the 2,336,826 shares of Columbia Oil common stock outstanding. If P. G. Gossler's stock is eliminated, these holdings total 215,875 or about nine per cent.

VI. There is not included in this tabulation, stock, appearing on Columbia Gas Exhibit 2, held in the names of brokerage firms, Coggeshall and Hicks, Gude Winnill and Company, Jesup and Lamont, or W. E. Hutton and Company, totaling 113,517 shares, which Missouri-Kansas argues would be voted for Columbia Gas on account of the [fol: 570] close connection between that company and these brokerage houses.

VII. The Columbia Oil stock was originally distributed by Columbia Gas in 1930 as a dividend to its common stockholders; at present, sixty-eight per cent of Columbia Oil stockholders own common stock of Columbia Gas.

VIII. No evidence was presented as to how many Columbia Oil stockholders own Columbia Gas securities other than Columbia Gas common stock; no evidence was presented as to how much Columbia Oil stock could be controlled or influenced by the persons enumerated in the finding above.

IX. The percentage necessary to constitute a quorum for meetings of stockholders of Columbia Oil is thirty-three and one-third per cent of the stock outstanding or 778,942 shares.

X. Panhandle Eastern should not be dominated or controlled directly or indirectly by Columbia Gas and should be maintained in a position of free and individual action in the production, transmission, sale and distribution of natural gas in competition with others.

XI. The acquisition by Panhandle Eastern of the Michigan Gas pipe line from the Illinois-Indiana border to Detroit, Michigan or the divestiture of its ownership by Columbia Gas is essential to the free and individual action of Panhandle, as stated above.

XII. In view of events before and after the entry of the consent decree in this proceeding, any plan proposed by Columbia Gas and Columbia Oil must be subject to scrutiny,

[fol. 571] XIII. The present consent decree remains unaffected so far as the defendants, Burt R. Bay and John H. Hillman, Jr., defendants in this proceeding, who have not joined in the present motion and proposed plan, are concerned.

XIV. The injunctive provisions of the plan are not, of themselves, sufficient to ensure accomplishment of the purpose of the consent decree.

XV. Disposal within five years by P. G. Gossler of the shares of Columbia Oil held by him to an outside buyer and the prohibition against his voting the shares in the meantime, are not sufficient by themselves to ensure accomplishment of the purpose of the consent decree.

XVI. No finding is made as to whether disposition of their holdings by United Corporation, Mrs. Katherine Clay, the estate of E. W. Edwards and the directors and officers of Columbia Gas, other than Mr. Gossler, would be sufficient to accomplish this result as no such proposal is embodied in the plan.

XVII. The termination of the trust estate set up by the consent decree and the transfer by the trustee to Columbia Oil of the Panhandle Eastern securities held by him under that trust are not obstacles to the accomplishment of the purpose of the consent decree and are proper.

XVIII. The transfer by the Trustee to Columbia Oil of 10,000 shares of Class B preferred stock of Panhandle Eastern and the continued holding thereof by Columbia

Oil, when considered with the other features of the plan, are not obstacles to the accomplishment of the purpose of the consent decree and are proper.

[fol. 572] XIX. The transfer by the trustee to Columbia Oil of 100,000 shares of Class A preferred stock of Panhandle Eastern is a proper method of providing Columbia with a source from which it may raise funds to reduce its obligations to Columbia Gas on its debentures and is not an obstacle to the accomplishment of the purpose of the consent decree.

XX. The sale by Columbia Oil of the 100,000 shares of Panhandle Eastern Class A preferred stock, returned to it by the trustee, or the sale of a new issue in lieu thereof, to procure funds for the payment to be made by Columbia Oil to Columbia Gas, hereafter referred to, in either case to a purchaser not connected with Columbia Gas, is not an obstacle to the accomplishment of the purpose of the consent decree and is proper.

XXI. The payment by Columbia Oil to Columbia Gas of \$10,000,000 on account of its debentures and the continued holding by Columbia Gas of the balance of \$11,000,000 of Columbia Oil debentures, under the conditions provided in the plan, do not present obstacles to the accomplishment of the purpose of the consent decree when the other features of the plan, to which reference will be made, are considered.

XXII. The surrender by Columbia Gas of the entire issue of 400,000 shares of Columbia Oil preferred stock in exchange for substantially all the assets of Columbia Oil other than its Panhandle Eastern holdings and its cash is proper, and in connection with the other provisions of the plan, to which reference will be made, should ensure accomplishment of the purpose of the consent decree.

[fol. 573] XXIII. The resignation of all officers and directors of Columbia Oil upon entry of the final order in this proceeding and the approval of the plan by the Securities and Exchange Commission, to the extent required by law, and the replacement of such officers and directors by persons not objectionable to the Department of Justice and who have no holdings of Columbia Gas securities per any connection, past or present, with that company, are proper and, in connection with the other provisions of the plan, should

ensure accomplishment of the purpose of the consent decree.

XXIV. The provision in the plan that, if appropriate action to that effect is taken by the stockholders of Columbia Oil, for five years from the entry of an order in this proceeding approving the plan, directors of Columbia Oil shall be limited to persons elected by the stockholders and not objectionable to the Department of Justice, in connection with the other provisions of the plan should ensure accomplishment of the purpose of the consent decree.

XXV. The corporate action by the stockholders of Columbia Oil, a Delaware corporation, to put into effect the provisions of the plan is possible under the laws of the State of Delaware, in view of the purpose of such action and the circumstances as a result of which such action would be taken.

XXVI. Panhandle Eastern's option to buy from Columbia Gas the stock and indebtedness of Michigan Gas and Indiana Gas within one year from the entry of a final decree in this proceeding at a price equal to the actual investment of Columbia Gas therein, is proper. No finding is made as [fol. 574] to what the actual investment of Columbia Gas in these properties is. The limitations on this option, that if Panhandle Eastern exercises it, it shall also buy a pipe line of Ohio Fuel Gas Company in Indiana for \$355,191, and that, if, within the option period of one year, an offer for these properties is received from a source not connected with Columbia Oil, then Panhandle Eastern shall have ninety days within which to meet such offer, are reasonable under the circumstances and proper. The further provision that after the expiration of the year during which the option shall continue, if the properties have not been sold, a trustee shall be appointed by this Court to make sale at a price not less than the actual investment of Columbia Gas therein, unless Columbia Gas consents, is proper. Taken all together, these provisions of the plan in conjunction with its other features should ensure accomplishment of the purpose of the consent decree.

XXVII. Retention of jurisdiction by this Court would enable it to proceed with this cause and, upon proper showing, grant such relief to the complainant as might be proper, if the necessary corporate action should not be taken by

Columbia Oil, if it should be held by a court, having jurisdiction, that such corporate action was not effective or if other developments prevented the plan from realizing the result intended by the consent decree. If the provisions for retention of jurisdiction are not broad enough to give this Court such power and if the Court would not have such [fol. 575] power without such provisions, if the Court is of the opinion that developments such as those referred to ought to be provided for, the provisions of the plan dealing with this subject should be enlarged.

Recommendations

The undersigned respectfully recommends, if your Honor should conclude that enlargement of the provisions of the plan dealing with retention of jurisdiction is unnecessary, then that your Honor approve the amended plan and upon approval of the Securities & Exchange Commission to the extent required by law and upon the taking of appropriate corporate action by the stockholders of Oil necessary under Section 6 of the Plan as amended, that the motion of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation referred to in the order of reference dated July 10, 1939 be granted, that the consent decree herein dated January 29, 1936 be modified as provided in that motion and in accordance with the terms of the proposed plan.

Respectfully submitted, (Sgd.) William Prickett,
Special Master.

July 29, 1939.

[fol. 576] IN UNITED STATES DISTRICT COURT

REPORT OF WILLIAM PRICKETT, SPECIAL MASTER—Filed
August 5, 1939

The Reference

By an order of this Court dated July 10, 1939, a motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, two of the defendants in said cause for an order providing that the consent decree entered in this cause January 29, 1936, be modified as in said motion

set forth, and in accordance with the terms of a certain proposed plan set forth in said motion, was referred to me as Special Master.

The Proceedings

On July 14, 1939, that being the earliest date available to the parties, I sat at my office, 404 Equitable Building, Wilmington, Delaware, to take testimony and hear arguments of counsel as provided in the order of reference. Thereafter I proceeded from day to day with such hearings. A transcript of the proceedings at such hearings is handed up herewith.

In the course of the hearings, an amendment to the plan was made by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, which is handed up herewith.

Briefs were filed on behalf of the parties and of Missouri-Kansas Pipe Line Company and the City of Detroit, Michigan, amici curiae.

[fol. 577] The hearings concluded with the filing of briefs on July 25, 1939.

Findings of Fact, Conclusions of Law and Recommendations

On July 29, 1939 and within five days of the conclusion of the hearings, as provided in the order of reference, I filed with the Clerk of this Court my Findings of Fact, Conclusions of Law and Recommendations.

Documents Returned Herewith

I hand up to the Court the following:

1. Findings of fact, conclusions of law and recommendations. (See page 562.)
2. Opinion. (See page 544.)
3. Memorandum on cases cited by parties and Missouri-Kansas Pipe Line Company. (Omitted from transcript.)
4. Transcript of testimony. (Omitted from transcript.)
5. Exhibits of Columbia Gas & Electric Corporation. (Omitted from transcript.)
6. Exhibits of Columbia Oil & Gasoline Corporation. (Omitted from transcript.)
7. Amendment to plan filed by Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. (See page 579.)

8. Brief of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. (Omitted from transcript.)

9. Memorandum on behalf of Columbia Oil & Gas Corporation and Columbia Gas & Electric Corporation and Missouri-Kansas Pipe Line Company. (Omitted from transcript.)

10. Brief of Missouri-Kansas Pipe Line Company, amici curiae (Omitted from transcript.)

11. Brief of City of Detroit. (Omitted from transcript.)

[fol. 578] 12. Reply brief of Missouri-Kansas Pipe Line Company. (Omitted from transcript.)

13. Telegram from United States of America. (Omitted from transcript.)

Respectfully submitted. (Sgd.) William Prickett,
Special Master.

July 29, 1939.

[fol. 579] IN UNITED STATES DISTRICT COURT

AMENDMENT TO PLAN FILED BY COLUMBIA GAS & ELECTRIC CORPORATION AND COLUMBIA OIL & GASOLINE CORPORATION WITH WILLIAM PRICKETT, ESQ., SPECIAL MASTER

Without objection by the plaintiff, the defendants amend the proposed Plan as follows:

(1) There shall be stricken out the last subparagraph of paragraph 6 of the proposed Plan, to-wit:

“The number of directors of Columbia Oil shall be no larger than the number of directors to which Columbia Oil may be entitled upon the board of Panhandle Eastern, and the directors of Columbia Oil shall be designated by Columbia Oil as its representatives upon the board of directors of Panhandle Eastern.”

and in lieu thereof the following paragraphs shall be substituted:

“The representatives of Columbia Oil on the Board of Directors of Panhandle Eastern shall be directors of Columbia Oil.

As early as practicable after the entry of the final order approving the Plan, the directors of Panhandle Eastern,

who now represent Columbia Oil, shall resign and be succeeded by persons who shall have been elected as directors of Columbia Oil under this Plan.

Columbia Oil will, subject to the necessary authorization by its stockholders, amend its Articles of Incorporation or take such other appropriate action as may be required by law to divide its Board of Directors into three classes, the term of office of the first class to expire at the annual meeting next ensuing after such classification, the term of office of the second class one year thereafter, and the term of office of the third class two years thereafter. Of the directors initially to be chosen under the Plan, the maximum number permissible by law shall be elected for the longest term.

[fol. 580] For a period of five years from the date of the entry of the order approving the Plan no person shall be qualified to be elected and serve as a director of Columbia Oil who shall be objectionable to the Department of Justice."

(2) Paragraph 9 of the proposed Plan shall be amended so that as amended it shall read as follows:

"9. The carrying out of the Plan shall be contingent upon the approval to the extent required by law of the Securities and Exchange Commission, and necessary and appropriate corporate action by the stockholders of Columbia Oil."

(Sgd.) Wm. S. Potter, Ward & Gray. (Sgd.) Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendants, Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr. (Sgd.) Daniel O. Hastings. (Sgd.) William H. Button. (Sgd.) Auchincloss, Alley & Duncan, Attorney for Defendants, Columbia Oil & Gas Corporation, and Charles A. Munroe. (Sgd.) Thomas J. Lynch, Special Assistant to the Attorney General. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

[fol. 581] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF COLUMBIA OIL TO THE REPORT OF WILLIAM PRICKETT, ESQ., SPECIAL MASTER—Filed August 7, 1939

Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil); one of the defendants in the above-entitled action, hereby enters its objections to the Report of William Prickett, Esq., Special Master, appointed by this Court on July 10, 1939, to consider, take testimony, hear arguments of counsel, and make report to this Court of his findings of fact, conclusions of law and recommendations concerning a certain motion of Columbia Oil and Columbia Gas and Electric Corporation (hereinafter referred to as Columbia Gas) filed in this Court on June 20, 1939. Columbia Oil makes the following objections.

Objections to the Findings of Fact and Conclusions of Law of the Special Master

Finding No. XXIV, Columbia Oil has no objection to this finding except to the implication therein that the arrangement in regard to the approval of the Department of Justice of the Directors chosen can be insured only by action of the stockholders of the Columbia Oil. We submit that the same object can be accomplished by the order of this Court.

Objection to the Opinion

Pages 4 and 5 of the Opinion. Columbia Oil objects to the statement in said Opinion of the Special Master referred to which indicates that despite the Consent Decree, domination of the Panhandle Eastern was continued by Columbia Gas. Our objection to this statement is that it [fol. 582] is not within the issues submitted to the Special Master, that there was no evidence produced in regard thereto, and that it is a conclusion that from the first has been denied by this defendant and this defendant contends that the injunctions included in the Consent Decree herein were ample to eliminate any control of Columbia Gas over the operations of the Panhandle Eastern Company.

Columbia Oil objects to the conclusions in paragraph V, page 13, et seq., of the Opinion of the Special Master. This defendant objects to the conclusion that the payment of any amount of the indebtedness by it to Columbia Gas

is an essential part of the plan. This objection is based on the contention that such issue was not referred to the Special Master and that no testimony to the effect that such payments were essential to make the plan effective was presented to him.

Respectfully submitted, (Sgd.) Daniel O. Hastings,
Attorney for Columbia Oil & Gasoline Corporation.

[fol. 583] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF COLUMBIA GAS TO THE REPORT OF WILLIAM
PRICKETT, Esq., SPECIAL MASTER—Filed August 7, 1939

Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), one of the defendants in the above-entitled action, hereby enters its objections to the Report of William Prickett, Esq., Special Master, appointed by this Court on July 10, 1939, to consider, take testimony, hear arguments of counsel, and make report to this Court of his findings of fact, conclusions of law and recommendations concerning a certain motion of Columbia Gas and Columbia Oil and Gasoline Corporation (hereinafter referred to as Columbia Oil) filed in this Court on June 20, 1939. Columbia Gas does not object to the recommendation of the Master that the motion of Columbia Gas and Columbia Oil be granted but only to the following matters stated in his findings of fact and in his opinion filed in the Court on July 29, the same being as follows:

Objections to the Findings of Fact and Conclusions of Law

1. Finding No. V. Columbia Gas objects to the statement that Philip G. Gossler holds 75,872 shares of common stock of Columbia Oil and it states the correct figure is 65,872. The Master has apparently taken the figure of Mr. Gossler's holdings as it existed at June 20, 1939 (Columbia Gas Exhibit No. 3), whereas after that date and before the hearing Mr. Gossler sold 10,000 shares, so that on July [fol. 584] 6, 1939, his holdings had been reduced to 65,872 shares (Columbia Gas Exhibit No. 2).

2. Finding No. V. Columbia Gas objects to the statement that the United Corporation and its subsidiary, New York United Corporation, together are the holders of twenty-

eight per cent (28%) of the common stock of Columbia Gas and it states that the correct figure is just under twenty per cent (20%). This appears from the testimony of Mr. Reynolds (Rec. p. 65) and also from Columbia Gas Exhibit No. 9.

3. Finding No. V. Columbia Gas objects to the statement that the estate of E. W. Edwards is the second largest stockholder of Columbia Gas, and states that Mr. E. W. Edwards who was a director of the Company until 1938 is still alive and that there is nothing in the record to support the statement that he is the second largest stockholder of Columbia Gas. It is not known to Columbia Gas whether or not he is the second largest stockholder.

4. Finding No. VI. Columbia Gas objects to the statement that there is a close connection existing between it and the firms of Coggeshall and Hicks, Gude, Winmill & Company, Jessup and Lamont and W. E. Hutton & Company, and states that there is nothing in the record to justify this statement other than the fact that Murray Coggeshall, of the firm of Coggeshall and Hicks, is a director of Columbia Gas and that James Hutton, of W. E. Hutton & Co., was formerly a director of Columbia Gas, and states [fol. 585] that there is no close connection. If the Master merely intended to state that the Missouri-Kansas argues that there is such a close connection, his language would not be objectionable, but in that case his language should be rephrased to so indicate, for at present it appears to have the effect of a finding.

5. Finding No. VII. Columbia Gas objects to the statement that "at present sixty-eight per cent of Columbia Oil stockholders own common stock of Columbia Gas" and states that the correct statement should be either that (1) "as of the latest dates submitted as readily available (December 20, 1938 in the case of Columbia Oil and February 6, 1939, in the case of Columbia Gas) almost sixty-eight per cent of Columbia Oil common stock was owned by persons also owning common stock of Columbia Gas" or (2) that "as of the latest dates submitted as readily available (December 20, 1938, in the case of Columbia Oil and February 6, 1939, in the case of Columbia Gas) sixty-one and a fraction per cent of Columbia Oil stockholders owned common stock of Columbia Gas". This appears from Co-

lumbia Gas Exhibit No. 9. The statement in the findings above quoted is apparently a miscalculation, because, as will appear from the exhibit referred to, considerably less than sixty-eight per cent of Columbia Oil common stockholders owned common stock of Columbia Gas.

6. Finding No. XI. Columbia Gas objects to the finding that:

"XI. The acquisition by Panhandle Eastern of the Michigan Gas pipe line from the Illinois-Indiana border to Detroit, Michigan or the divestiture of its ownership by Columbia Gas is essential to the free and individual action of Panhandle, as stated above."

[fol. 586] Columbia Gas does not admit the correctness of this finding but on the contrary denies it and asks that it be omitted for the reason that (1) this was not within the scope of the issues before the Master, inasmuch as the Government's Supplemental Complaint of December, 1938, did not ask for any relief with regard to the Michigan Gas pipe line or even mention the same, and the issues referred by the Court to the Master were limited to the issues raised by that Supplemental Complaint; and also for the reason that (2) the record does not contain any testimony on the question whether it is necessary that Panhandle Eastern acquire the Michigan Gas pipe line, since no testimony was offered or believed to be pertinent by Columbia Gas on a subject that was outside of the scope of the issues referred to the Master.

Objections to the Opinion

1. Page 4, section of Opinion headed "Injunctions". Columbia Gas objects to the following two sentences (here italicized) occurring in the second paragraph of this opinion:

"The consent decree also contained elaborate injunctive provisions, forbidding the defendants from exercising any domination or control over Panhandle Eastern. *In spite of these provisions, however, this influence and control has apparently persisted, resulting in the renewed complaints of the Government. So I conclude that the injunctions alone were not, and will not, be effective to prevent the abuses complained of.*"

Columbia Gas objects to this because, as this stands, it is a statement of a matter not within the scope of the issues referred to the Master by the Court and also because it is a matter on which no evidence was offered. The objections are, in brief, of the same nature as those made with respect to Finding of Fact No. XI above, relative to the [fol. 587] necessity of the acquisition of the Michigan Gas Pipe Line by Panhandle Eastern. Columbia Gas also does not admit the correctness of the statement quoted but on the contrary denies it.

2. Pages 6 and 7: Section of Opinion headed "Disposition of Gossler Stock". Columbia Gas raises the same objections, which it raised to Finding of Fact No. V, with respect to (a) the statement that Gossler's holdings of Columbia Oil common stock amount to 75,872 shares and (b) that the holdings of the United Corporation and its subsidiary in Columbia Gas are 28% thereof and (c) that the estate of E. W. Edwards is the second largest stockholder of Columbia Gas. The reasons for the objection are the same as those expressed in the objection to Finding of Fact No. V.

3. Page 8: Section of Opinion headed "Disposition of Gossler Stock". Columbia Gas objects to the statement in the last paragraph on this page where it speaks of a "close connection" existing between Columbia Gas and the firms of Coggeshall and Hicks, Gude, Winmill & Company, Jessup and Lamont and W. E. Hutton & Company, for the same reasons that it has set forth in its objection to Finding of Fact No. VI above.

4. Page 9: Section of Opinion headed "Disposition of Gossler Stock". Columbia Gas objects to the statement that "at the present time sixty-eight per cent of the 28,000 odd Columbia Oil stockholders own common stock of Columbia Gas", for the reason given to Finding of Fact No. VII above, and states that a correct statement would be as [fol. 588] set forth in the objection to that Finding.

5. Page 13: Section of Opinion headed "Payment by Columbia Oil On Account of Its Debentures". Columbia Gas objects to the second sentence of this section of the Opinion, which is here italicized:

"Columbia Gas now holds \$21,000,000 of Columbia Oil's debentures; this amount is to be reduced to \$11,000,000

by a payment to Columbia Gas of \$10,000,000, to be raised by Columbia Oil. *If, for any reason, Columbia Oil is not able to raise this amount, I assume that the plan will fail as this is an essential feature of it. * * **

Columbia Gas calls attention to the provision of the Plan (paragraph 5 (a) thereof) which requires Columbia Oil to use its best efforts to raise the \$10,000,000 referred to in one of the several ways described in the plan. The above-quoted sentence from the opinion is consequently not an accurate restatement of this provision.

Respectfully submitted, (Sgd.) Wm. S. Potter, Ward & Gray. (Sgd.) Cravath, deGersdorff, Swaine & Wood, Attorneys for Columbia Gas & Electric Corporation.

[fol. 589] IN UNITED STATES DISTRICT COURT

EXCEPTIONS OF UNITED STATES OF AMERICA TO REPORT OF
WILLIAM PRICKETT, ESQUIRE, SPECIAL MASTER—Filed
August 7, 1939.

Now comes plaintiff United States of America, by its attorneys Thomas J. Lynch and Morris R. Clark, Special Assistants to the Attorney General, and respectfully excepts and objects to the report of the Special Master herein filed July 29, 1939, in the following respects:

(1) Plaintiff excepts to the failure of the Special Master to find that, in order to ensure the accomplishment of the purpose of the consent decree entered January 29, 1936, it is necessary and essential, in addition to carrying out all other provisions of the amended Plan, that the several blocks of common stock of Columbia Oil & Gasoline Corporation referred to in paragraphs XV and XVI of the Master's Findings of Fact and Conclusions of Law be disposed of by the present holders thereof to other persons having no direct or indirect interest in or connection with Columbia Gas & Electric Corporation, on or before the entry of any final order approving the amended Plan and granting defendants' motion.

(2) Plaintiff excepts to the recommendation of the Special Master that the court approve the amended Plan and grant said motion, and to the failure of the Special Master

to recommend that such Plan be disapproved and said [fol. 590] motion be denied unless and until (in addition to carrying out all other provisions of the amended Plan) the several blocks of common stock of Columbia Oil & Gasoline Corporation referred to in paragraphs XV and XVI of the Master's Findings of Fact and Conclusions of Law be disposed of by the present holders thereof to other persons having no direct or indirect interest in or connection with Columbia Gas & Electric Corporation.

(Sgd.) T. J. Lynch, Special Assistant to the Attorney General. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

[fol. 591] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF MISSOURI-KANSAS PIPE LINE COMPANY TO
REPORT OF SPECIAL MASTER—Filed August 8, 1939

Now comes Missouri-Kansas Pipe Line Company, by its solicitor, and respectfully excepts and objects to the Report of the Special Master herein, filed July 29, 1939, in the following respects:

1. To the finding and recommendation that the motion referred to in the order of reference ought to be granted and the Consent Decree modified as provided in said motion and in accordance with the terms of the proposed Plan.

2. To the failure of the Special Master to find that a continuance of the stock holdings mentioned in Findings XV and XVI prevent the Plan from accomplishing the purpose of the Consent Decree.

3. To the failure of the Special Master to include in Finding V the holding of the defendant Charles A. Munroe and William P. Philips as Voting Trustees of 70,584 shares.

4. To the failure of the Special Master to include in Finding numbered V the holdings in the name of brokerage firms set forth in Finding VI.

5. To the failure of the Special Master to require evidence as to the matters set forth in Finding numbered VIII and to his approval of the Plan without such evidence.

6. To the holding of the Special Master in Findings numbered XVII, XVIII, XIX, XX and XXI, that the various matters therein set forth respectively are not obstacles to the accomplishment of the purpose of the Consent Decree [fol. 592] and are proper.

7. To the Finding numbered XXII that the surrender by Columbia Gas of certain Columbia Oil stock in exchange for other assets of Columbia Oil is proper, and should in connection with other provisions of the Plan insure accomplishment of the purpose of the Consent Decree.

8. To the Finding numbered XXIII to the effect that replacement of certain officers and directors of Columbia Oil should insure accomplishment of the purpose of the Consent Decree.

9. To the Finding numbered XXIV that the provision in the Plan that for five years directors of Columbia Oil shall be limited to persons not objectionable to the Department of Justice should in connection with the other provisions of the Plan insure accomplishment of the purpose of the Consent Decree.

10. To the Finding numbered XXV that corporate action by the stockholders of Columbia Oil to put into effect the provision referred to in Finding numbered XXIV is possible under the laws of the State of Delaware.

11. To the failure of the Special Master to take evidence and make a finding as to the actual investment of Columbia Gas in the Michigan Gas and Indiana Gas properties as stated in Finding numbered XXVI.

12. To the finding by the Special Master that the proposed Plan and motion result in an effective divestiture by Columbia Gas of "all control, direct or indirect, legal or practical, of Panhandle Eastern", as required by the Consent Decree.

[fol. 593] 13. To the failure of the Special Master to receive or take evidence or make a finding as to the fairness of the exchange of 400,000 shares of Columbia Oil preferred stock held by Columbia Gas for the securities and indebtedness held by Columbia Oil in five of its subsidiary companies.

14. To the failure of the Special Master to take evidence or make a finding as to the identity and connections of the syndicate which the evidence showed had been formed to purchase and was already engaged in purchasing certain large blocks of Columbia Oil common stock.

15. To the failure of the Special Master to recommend denial of the motion and disapprove of the Plan upon the ground that the same makes no provision against control by Columbia Gas after the expiration of five years.

Respectfully submitted, (Sgd.) Martin G. Hannigan,
Solicitor for Missouri-Kansas Pipe Line Company.

[fol. 594] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF THE CITY OF DETROIT AS AMICUS CURIAE TO THE
REPORT OF THE SPECIAL MASTER—Filed August 12, 1939

Now comes the City of Detroit by Raymond J. Kelly, Corporation Counsel, appearing herein as amicus curiae under and by virtue of an order of this Court dated June 20, 1939, and objects to the report of William Prickett, Esq., Special Master, appointed by this Court on July 10, 1939, to consider, take testimony, hear arguments of counsel and make report of his findings of fact, conclusions of law and recommendation concerning the motion of Columbia Gas and Columbia Oil filed in this Court on June 20, 1939, which report of said Special Master was filed herein on July 29, 1939, the objections of the City of Detroit being as follows:

1. Because of the recommendations of the Special Master that the Court approve the amended plan and grant said motion.

2. Because of the failure of the Special Master to recommend that such plan be disapproved for the reason that said Special Master found, on page 19 of his opinion, that it must be admitted that the separation of Columbia Gas and Columbia Oil from Panhandle Eastern would be much simpler from a procedural point of view, would be sure to accomplish the result intended by the consent decree and would be acceptable to the Government. The City of De-

troit feels that if in the opinion of the Special Master there is a more simple and certain way to accomplish the results sought in this action, that the Special Master should dis-[fol. 595] approve of the proposed plan for this reason alone.

3. Because of the recommendations in the report of the Special Master, as well as the concluding paragraph of his opinion, reveal the obstacles, legal and otherwise, to the consummation of the proposed plan, including the possibility of this Court being unable to exercise effective jurisdiction over an absent director or officer of Columbia Oil, not a party to this cause, to compel him to resign if he refused to do so, and the possibility that the Courts of Delaware might hold that corporate action contemplated by the plan was ineffective.

4. Because it is the duty of this Court to accomplish the results here sought in the most effective way possible and where the Special Master's findings reveal a more simple, effective and certain way of accomplishing these results, the recommendations should have been for disapproval of the proposed plan because of its uncertainty, its possible ineffectiveness and the better plan suggested or recommended in the interests of justice.

5. Because it is apparent that the ends sought by the Government's action can be best accomplished by the divestiture of Columbia Oil of their interest in and domination over Panhandle, Eastern and by the divestiture of Columbia Gas from their ownership and control over Michigan gas.

Respectfully submitted, (Sgd.) Raymond J. Kelly,
Corporation Counsel of the City of Detroit, Appearing as Amicus Curiae, 301 City Hall, Detroit, Michigan.

Dated: August 10, 1939.

[fol. 596] IN UNITED STATES DISTRICT COURT

PETITION OF MISSOURI-KANSAS PIPE LINE COMPANY FOR POST-PONEMENT OF HEARING ON EXCEPTIONS TO REPORT OF WILLIAM PRICKETT, ESQUIRE, SPECIAL MASTER—Filed November 1, 1939

The petition of Missouri-Kansas Pipe Line Company respectfully shows to this court and alleges:

1. Petitioner, Missouri-Kansas Pipe Line Company (hereinafter referred to as "Mokan"), is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

2. On March 6, 1935, United States of America commenced this suit in equity against the above-named defendants by filing a petition herein alleging that the said defendants had entered into a conspiracy to violate and had violated the anti-trust laws of the United States; said petition was thereafter amended and supplemented on October 30, 1935, at which time the allegations of the United States as to the violation of the anti-trust laws by the defendants herein was substantially broadened and made more specific by the detailed allegation of various acts and practices.

3. The suit brought by the Government was predicated upon alleged unlawful restraints of divers sorts imposed upon Panhandle Eastern Pipe Line Company (hereinafter called "Panhandle Eastern") by the defendants herein.

4. Subsequently and on January 29, 1936, pursuant to a consenting stipulation, a decree of this court was duly made and entered against all of the defendants. Reference is made to said decree and stipulation as if herein fully and [fol. 597] at length set forth.

5. The decree above referred to provided among other things for the appointment of Gano Dunn as trustee for the purposes set forth in the decree, his trusteeship to continue until such time as it should terminate with the approval of this court:

"* * * when (1) Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by (a) no longer owning stock of any class having present or potential voting rights in

Columbia Oil or (b) by Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern; or when (2) under the circumstances then existing, the continuance of said trust is no longer essential or necessary in carrying out the purposes of this decree; * * *

6. Since the entry of the said decree and up to the present time said trusteeship has continued.

7. On December 21, 1938, United States filed its motion for leave to serve a further supplemental complaint, which supplemental complaint was filed January 12, 1939.

8. On February 6, 1939, a motion and petition for leave to intervene was filed by the petitioner herein, Moka, and on March 29, 1939, the opinion of this court denying Moka leave to intervene was filed; the order of this court denying intervention being filed March 30, 1939.

9. On May 15, 1939, United States filed its motion for leave to withdraw its supplemental complaint; its motion to vacate the decree of January 29, 1936, and its further amended and supplemental complaint.

[fol. 598] 10. On June 20, 1939 a motion and plan of the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation were filed herein. The plan filed by said defendant corporations proposed, among other things, a modification of the consent decree of January 29, 1936; various readjustments of intercorporate relationships, all to the alleged effect of a divestiture by Columbia Gas & Electric Corporation of any class of the stock of Columbia Oil & Gasoline Corporation having present or potential voting rights in the latter corporation, said plan being put forward apparently with a view to securing the termination of the trust created by this court under the decree of January 29, 1936 by means of a seeming compliance with the second alternative provided in that decree before the termination of said trust would be approved.

11. On July 5, 1939 Moka filed its second motion and petition for leave to intervene.

12. On July 10, 1939 an order of the Court denying this second motion to intervene was entered and filed and on the same day by order of the court the plan proposed by

the defendant corporations was referred to the Honorable William Prickett, as Special Master.

13. A notice of appeal from the order entered March 30, 1939 denying Mogan's first petition to intervene, was filed on June 26, 1939 and a further notice of appeal, from the order of July 10, 1939 denying Mogan's second motion and petition to intervene, was filed July 14, 1939.

[fol. 599] 14. Mogan has duly prosecuted its appeals from the orders above referred to in the United States Circuit Court of Appeals for the Third Judicial Circuit, by procuring the record in this case to be certified to that court by the Clerk of this court; by duly printing, filing and serving said record and by preparation, filing and serving of its brief.

15. The argument on the Mogan appeals in said Circuit Court of Appeals for the Third Judicial Circuit has been set down for Tuesday, November 7, 1939.

16. The sole issue before the United States Circuit Court of Appeals for the Third Judicial Circuit is, whether Mogan, the petitioner herein, should be permitted to intervene in this cause as previously moved and prayed in the motions and petitions hereinabove referred to.

17. A hearing has been set, and notice thereof given, before the United States District Court for the District of Delaware for the purpose of hearing the pending exceptions filed in this cause to the report of William Prickett, Esq., Special Master, in order to determine whether the report of said Special Master should be confirmed.

18. A stay of further proceedings herein until a determination of the Mogan appeals will not prejudice the rights of the parties to this cause.

Wherefore, petitioner prays:

[fol. 600] 1. that this Honorable Court by appropriate order stay and enjoin any further proceedings before it in respect to this cause or in respect to the presentation of the plan proposed by the corporate defendants herein for the approval of this court until such time as petitioner's appeals referred to herein can be heard and determined by the United States Circuit Court of Appeals for the Third Judicial Circuit.

2. that such other and further relief be granted petitioner as to this Honorable Court may seem just and equitable.

And petitioner will ever pray, etc.

Missouri-Kansas Pipe Line Company, by (Sgd.) W. C. Tringham, Treasurer, Petitioner. By (Sgd.) Martin G. Hannigan, Solicitor for Petitioner. (Corporate Seal.)

[fol. 601] . *Duly sworn to by William C. Tringham. Jurat omitted in printing.*

[fol. 602] IN UNITED STATES DISTRICT COURT

ORDER POSTPONING HEARING ON EXCEPTIONS TO REPORT OF WILLIAM PRICKETT, ESQUIRE, SPECIAL MASTER—Filed November 1, 1939

And now, to wit, this 1st day of November, A. D. 1939, upon reading and considering the petition of Missouri-Kansas Pipe Line Company this day filed in the above entitled cause, after hearing counsel for the respective parties, upon consideration thereof,

It Is Ordered by the Court that the hearing on the pending exceptions to the report of William Prickett, Esq., Special Master, with respect to the plan proposed by said Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, defendants, for a modification of the consent decree entered in this cause January 29, 1936, be and hereby is postponed until a day to be hereafter fixed subsequent to the hearing by the United States Circuit Court of Appeals for the Third Circuit on November 7, 1939, of the appeals taken by Missouri-Kansas Pipe Line Company from the orders of this court entered March 30, 1939 and July 10, 1939, denying motions and petitions of said Missouri-Kansas Pipe Line Company for leave to intervene in this cause.

(Sgd.) John P. Nields, J.

[fol. 603] IN UNITED STATES DISTRICT COURT

APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY
FOR RELIEF TO WHICH SAID COMPANY IS ENTITLED UNDER
SECTIONS IV AND V OF THE DECREE FILED HEREIN JANUARY
29, 1936—Filed March 23, 1940

Panhandle Eastern Pipe Line Company, making this application for relief to which it is entitled under Sections IV and V of the Decree filed herein January 29, 1936, respectfully shows to this Court and alleges:

I. Panhandle Eastern Pipe Line Company above mentioned (hereinafter called "Panhandle Eastern") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of Delaware and is referred to in the Decree filed herein January 29, 1936.

Michigan Gas Transmission Corporation hereinafter mentioned (hereinafter called "Michigan Gas") since on or about January 31, 1936 has been and now is a corporation organized and existing under the laws of Delaware.

Columbia Gas & Electric Corporation, one of the defendants herein (hereinafter sometimes called Columbia Gas) at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of the State of Delaware.

Columbia Oil & Gasoline Corporation, one of the defendants herein (hereinafter sometimes called Columbia Oil) at all times hereinafter mentioned was and now is a corporation organized and existing under the Laws of the State of Delaware.

II. On March 6, 1935, the above named plaintiff, United States of America (hereinafter called "United States"), commenced this suit in equity against the defendants herein [fol. 604] by filing a Petition herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust Laws of the United States.

III. Thereafter on October 30, 1935, United States filed an Amended and Supplemental Petition (hereinafter called "Amended Petition"), reference to which is hereby made as if herein fully and at length set forth.

IV. Thereafter on January 29, 1936, a stipulation was duly entered into between United States and the defendants

herein consenting to the entry of a Decree against said defendants, and on said day a Decree, to which was attached as a part thereof the aforesaid stipulation, was duly made and entered in this Court against all of the defendants herein, reference to which stipulation and Decree is hereby made as if herein fully and at length set forth.

V. Said decree provides among other things as follows:

"Section V. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying on hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

VI. Section IV of said Decree is as follows (italicizing ours):

[fol. 605] "That the defendants be and they are hereby *perpetually enjoined* from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

"That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in *any* way, directly or *indirectly*, presently or *potentially*, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as

security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, if any way prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any Court of competent jurisdiction Panhandle Eastern shall have the right (1) to the *immediate appointment of a trustee to hold such contract rights or Property* subject to the purposes and provisions of this decree; (2) to immediate *specific* performance of *any and all* contracts with Columbia Gas; and (3) to *immediate* injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder."

VII. Prior to the making and entry of the aforesaid Decree, Panhandle Eastern, which was then completely [fol. 606] under the control of the defendants herein, had entered into a contract or agreement with The Detroit City Gas Company, hereinafter sometimes referred to as the Detroit Contract, by the terms of which Panhandle Eastern had agreed to supply natural gas to the City of Detroit, Michigan, for a period of 15 years, which contract is the same contract mentioned and described in said Section IV of the Decree herein.

VIII. At the time the said Detroit Contract was entered into, as well as at the time the said Decree was made and entered herein, the eastern terminus of the Panhandle Eastern natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana state boundary line, which point is indicated on a map annexed hereto, made a part hereof and marked "Exhibit A". At said times there was no pipe line connection between the said eastern terminus of the Panhandle Eastern Pipe Line at Dana, Indiana, and the City of Detroit, Michigan, a distance of more than three hundred miles. Said map shows the Panhandle Eastern pipe line and the Columbia System as they existed prior to the commencement of this suit.

IX. The said Detroit Contract contained, among other things, provision for (a) the construction by Panhandle Eastern of a pipe line extension from the eastern terminus of the then existing Panhandle Eastern pipe line to the

City of Detroit, Michigan (hereinafter sometimes referred to as the "Detroit extension"), (b) the reinforcement of the existing pipe line, and (c) the financing of said construction and reinforcement, in terms and words [fol. 607] as follows:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

X. Because of the existence of said contract, and contemplating the construction of said extension, said Decree filed herein January 29, 1936 (paragraph IV) provided for alternate methods of financing, and further provided that if the Detroit extension and the necessary reinforcements to the main line of Panhandle Eastern were constructed with financial assistance secured from Columbia Gas, such

"financial assistance (must be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any [fol. 608] voting rights, control or participation in the management of Panhandle Eastern or confer any rights of

ownership in the works or properties of Panhandle Eastern except as security for the investment;”

XI. Notwithstanding said Decree and the further provision therein contained that the defendants were perpetually enjoined from acquiring, directly or indirectly, the whole or any part of the property or assets of Panhandle Eastern, two days after the entry of said Decree, namely, on January 31, 1936, Defendant Columbia Gas, for its own benefit and use, directly acquired from Panhandle Eastern that part of the contract under which Panhandle Eastern owned the right to construct, own and operate the extension from the eastern terminus of the Panhandle Eastern line to the City of Detroit, and by means of its complete control of the Board of Directors of Panhandle Eastern caused the necessary corporate action to be taken to permit such acquisition. Said corporate action was taken before Gano Dunn, Trustee appointed by and under said Decree herein, had qualified and taken office and was taken at directors' meetings superintended by Charles A. Munroe, one of the defendants herein. Through its wholly owned subsidiary Michigan Gas, Columbia Gas has constructed and now owns and operates said extension, and has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the Decree aforesaid.

XII. By reason of its ownership and operation of said Detroit extension, Columbia Gas has been enabled to take [fol. 609] over, dominate and control the markets available to said Detroit extension in Indiana and southeastern Michigan (except the City of Detroit), and to restrain trade and commerce in natural gas by Panhandle Eastern in the said markets and in the Ohio markets of the Columbia companies adjacent to said extension. The map which is hereto annexed and marked Exhibit B shows the territory in and about the State of Indiana with the pipe lines of Panhandle Eastern and of the Columbia System as they existed prior to the commencement of this suit. The annexed map which is marked Exhibit C shows the same territory and the said lines as they existed on January 29, 1936, the date of the above mentioned Decree herein. The annexed map which is marked Exhibit D shows the location of the said Detroit extension together with various laterals therefrom which Columbia Gas has constructed to connect with existing artificial and mixed gas lines which are also shown on said

map, such extension of the Columbia System having occurred since the entry of said Decree herein and in order that Columbia Gas might control the markets in the aforesaid territory and enlarge its monopoly so as to include said Indiana and Michigan territory, and to restrain trade and commerce by Panhandle Eastern therein. The City of Toledo, in the State of Ohio, is twelve miles east of the Detroit extension as shown on said map, and is served by Columbia Gas from its Ohio system. By owning and operating said Detroit extension, Columbia Gas has prevented Panhandle Eastern from competing in the Toledo market, as well as in the other markets in the territory available to said extension, has restrained trade and commerce by Pan-[fol. 610] handle Eastern therein and has prevented Panhandle Eastern from freely transporting, selling and distributing gas within said territory. Under the terms of a contract between Michigan Gas and Panhandle Eastern, said Gano Dunn as Trustee under said Decree herein, and by the Columbia Gas-dominated Board of Panhandle Eastern, allocation is made of the prices received from the City of Detroit so that an unfair and unreasonable part thereof is paid to and retained by Michigan Gas, all to the detriment of Panhandle Eastern, its stockholders, and the public.

XIII. In addition to the moneys required for the construction of the aforesaid extension, Panhandle Eastern required, for the fulfilment of said Detroit contract, further moneys for the reinforcement of its own line. The above mentioned Decree herein expressly provided that if such financial assistance were procured from Columbia Gas, it must be furnished, as hereinabove set forth, only upon terms which did not (*italicizing burs*) "in *any* way directly or *indirectly*, presently or *potentially* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern." Columbia Gas violated said express provision by causing its controlled affiliate, Columbia Oil, to acquire an additional 80,000 shares of the common stock of Panhandle Eastern shortly after the entry of the said Decree with moneys advanced by Columbia Gas, namely, the sum of \$2,000,000. which Columbia Gas advanced to Columbia Oil for the express purpose of enabling the latter to make such payment and to acquire such stock. Said funds when received by Pan-

[fol. 611] handle Eastern were used by it for the said reinforcement of its said line. Such purchase of additional stock gave to Columbia Oil a majority of the common stock of Panhandle Eastern then outstanding, and Columbia Oil still owns such majority, and still owes Columbia Gas said \$2,000,000.

While Columbia Oil was and is permitted, under said Decree of this Court, to acquire stock in Panhandle Eastern, such permission was made expressly subject to the further terms of said Decree, including the injunction against acquisition by Columbia Gas of any interest in Panhandle Eastern. The device herein set out was intended to evade the restraint imposed on Columbia Gas by said Decree, and to enable Columbia Gas to acquire an indirect or a potential interest in Stock of Panhandle Eastern having voting rights, and substantial control thereof, all in violation of the express terms of said Decree. At all times since the entry of said Decree the Board of Directors of Panhandle Eastern has been composed of nine persons and since at least the annual meeting of March of 1937, five of said nine have been nominees of Columbia Oil. Said five nominees of Columbia Oil and Gano Dunn, the Trustee aforesaid, have at all times done the bidding of Columbia Oil and Columbia Gas and have at no time taken any steps which would have been for the best interest of Panhandle Eastern if in doing so the interest of Columbia Gas or any of its associates or affiliates would have been injured.

XIV. Columbia Oil was initially organized by Columbia Gas for the purpose of holding certain of the properties and [fol. 612] securities of Columbia Gas. The original Board of Directors of Columbia Oil were selected by Columbia Gas and its officers and directors. The management thus put in charge of Columbia Oil by Columbia Gas at its inception has perpetuated itself in control of Columbia Oil at all times since its organization through the solicitation of management proxies and the use of said proxies to continue the same management in office. This has been rendered possible by virtue of the fact that a majority of the stockholders of Columbia Oil are stockholders of Columbia Gas and the officers of Columbia Oil have been stockholders of both Columbia Oil and Columbia Gas practically from the organization of Columbia Oil. At the last Annual stockholders' meeting of Columbia Oil the management proxy committee cast a vote for the same management which con-

sisted of 99.9% of the total votes cast, of which percentage 82.9% in turn represented stock owned and held by persons who were also stockholders of Columbia Gas. The two corporations have at all times been in effect identical in respect of management and control, and have at all times combined and conspired as hereinafter set forth to restrain trade and commerce in natural gas among the States in which Columbia Gas operated and operate directly and through subsidiaries. Through the control which Columbia Gas has at all times had over the business and affairs of Columbia Oil, through the perpetuation of the Columbia Gas management in office and the vote by Columbia Gas stockholders as aforesaid, Columbia Gas has been able to have Columbia Oil join with it in the combination and conspiracy herein-[fol. 613] after set forth and has at all times been able to use Columbia Oil, its officers and directors, as agents and instrumentalities of Columbia Gas in said combination and conspiracy to restrain the sale of natural gas in the territories above mentioned and to aid Columbia Gas to monopolize and attempt to monopolize the trade and commerce in natural gas in the territories aforesaid.

XV. The limitations imposed upon the above mentioned Trustee, Gano Dunn, by the provisions of sub-paragraphs (a) and (b) of Section III of the Decree above mentioned and the willingness of the said Gano Dunn to act as the agent and instrumentality of Columbia Gas and Columbia Oil have made it impossible for said Trustee to serve in accordance with the purposes of said Decree as an effective insulator against the control theretofore exercised by Columbia Gas, through Columbia Oil, over Panhandle Eastern and at all times since the entry of said Decree until the present time, Columbia Gas has exercised control and domination through Columbia Oil over Panhandle Eastern in restraint of trade in natural gas in the territories aforesaid and has thereby protected and strengthened its monopoly in the States of Ohio, Michigan, Indiana and adjoining territories.

XVI. In anticipation of further financing of Panhandle Eastern for the reinforcements of its line and the construction of said Detroit extension, Columbia Gas and Columbia Oil, in violation of said Section IV of said Decree, undertook to and did cause to be issued to Columbia Oil the following shares of preferred stock of Panhandle Eastern: [fol. 614] (1) 100,000 shares Class A, \$6 accumulative and participating preferred stock having a par value of \$100.

per share, each, of said shares having voting rights share for share with the common stock on all matters excepting the election of directors;

(2) 10,000 shares of Class B, \$6. preferred stock of the par value of \$100 per share. This preferred stock is entitled to vote share for share with the common, and in addition thereto is entitled, as a class, to elect two directors of Panhandle Eastern. Said 10,000 shares was created and issued to Columbia Oil pursuant to the provisions of a settlement agreement entered into between the Columbia Gas and Columbia Oil and Receivers of Missouri-Kansas Pipe Line Co., a Delaware Corporation, sometimes herein referred to as Mokan. In the negotiations leading up to said settlement agreement, officers of Columbia Gas stated that they would not make a settlement with the Mokan Receivers of claims which said Mokan Receivers then had against the Columbia Gas and Columbia Oil, unless said Mokan Receivers would agree that said issue of Class B preferred stock be created and issued to Columbia Oil and be non-redeemable and non-callable and containing the provision that it should have the right to elect two directors of Panhandle Eastern. Said officers of Columbia Gas on its behalf stated that neither they nor Columbia Gas would agree to any settlement with said Receivers of Mokan unless Columbia Gas and Columbia Oil were given control on the Board of Panhandle Eastern. Said negotiations were had and said statement made after the entry of said Decree aforesaid and were directly contrary to the terms and provisions of said Decree.

XVII. The said 80,000 shares of common stock of Panhandle Eastern, when so acquired by the defendants herein, and also said two classes of preferred stock, namely, 100,000 shares of Class A and 10,000 shares of Class B, were turned over to, and legal title thereto is now held by said Gano Dunn as Trustee under said Decree.

[fol. 615] XVIII. After Columbia Gas and Columbia Oil had procured the ownership of the aforesaid Detroit extension, and additional common stock of Panhandle Eastern as above described, Columbia Gas and Columbia Oil thereupon, in further violation of the express terms of said Decree, and through the use of said Detroit extension acquired from Panhandle Eastern as aforesaid, contrived to and did effect arrangements with Panhandle Eastern for the

transportation of gas through the Detroit extension, so as to secure to themselves a further monopoly in the commerce of natural gas in Indiana, Ohio and Michigan, and to restrain trade and commerce by Panhandle Eastern therein, by causing Panhandle Eastern to enter into an agreement of March 17, 1936 with the Michigan Gas, the wholly-owned subsidiary of Columbia Gas, which provided in part as follows (Panhandle Eastern is referred to as "Eastern", and Michigan Gas Transmission Corporation as "Michigan") (italicizing ours):

"4. *If at any time in the future, while this Agreement remains in force, Eastern has additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan, then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, that Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan [fol. 616] shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and Eastern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis (whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry*

such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern."

XIX. The purpose, intent and effect of the contract, from which the foregoing provision is quoted, was to enable Columbia Gas to contract with the various municipalities and distribution systems located along said extension in Indiana, Ohio and Michigan, for the sale by Columbia Gas of Panhandle Eastern's gas to such communities at prices and on terms satisfactory to Columbia Gas and to enable Columbia Gas further to dominate and control the sale of natural gas in the States of Ohio, Indiana and Michigan and to restrain trade and commerce by Panhandle Eastern therein. [fol. 617] Columbia Gas at the time of the making of said contract controlled the executive management of Panhandle Eastern and well knew that the gas reserve of Panhandle Eastern were more than adequate to supply the total capacity of Panhandle Eastern's pipe line and that there would be at all times "additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan (Gas)", and intended thus to contrive and did contrive that Columbia Gas should have control of any gas of Panhandle Eastern that was available for ultimate distribution in the territory that might be then reached by the pipe lines of Michigan Gas and to exact for itself an unreasonable and unfair price for such gas, in order that the price structure of the Columbia System in Indiana and Michigan and more particularly in Ohio, should not be affected. The defendants herein (except Hillman) have agreed between themselves and with the management of Panhandle Eastern that the contracts between Panhandle Eastern and Michigan Gas should be construed so as not to permit Panhandle Eastern to sell gas for Industrial use directly in the territory reached by the line of Michigan Gas or to require the line of Michigan Gas to carry the same, with the result that Panhandle Eastern has been prevented from offering gas for industrial use in Indiana, Ohio and Michigan, particularly in the Toledo area, although it could have sold great quantities of the same.

XX. That annexed hereto and marked Exhibit E is a copy of certain resolutions duly adopted at the Annual Meeting of Stockholders of Panhandle Eastern duly called [fol. 618] and held on the 11th day of March, A. D. 1940 under the provisions of which this application is made. Said resolutions were proposed at said meeting and after being seconded, received the affirmative vote of persons and proxies at said meeting representing 373,600 shares of the common stock of Panhandle Eastern. All stockholders and proxies present at such meeting voted for said resolutions, except the management proxy, who represented 5,380 shares, and Harold B. Howard, proxy for 109 shares, neither of whom voted on the resolutions, and Gano Dunn, the Trustee for Columbia Oil under the terms and conditions of the Consent Decree entered herein on January 29, 1936, who sought to vote against the resolutions, which vote by the said Gano Dunn was, however, improperly and illegally cast.

That said letter of January 15, 1940 referred to in said resolutions demands inter-alia that Panhandle Eastern:

"4. Intervene in the proceedings pending in the United States District Court for the District of Delaware as provided in Paragraph V of the decree of said court entered on January 29, 1936 and request that the Columbia companies be held in contempt by virtue of their violations of Paragraph IV of said decree and pray that the Columbia companies be required to sell to Panhandle Eastern all of the stock of Michigan Gas Transmission corporation for the total investment of said companies in said corporation less dividends and all other monies received, directly or indirectly, by Columbia Gas & Electric Corporation from profits made by said Michigan Gas Transmission Corporation by virtue of the contract of March 17, 1936."

Wherefore, your petitioner, Panhandle Eastern, respectfully prays as follows:

[fol. 619] (1) That an order be entered herein allowing it to file this application and be made a party for the limited purpose of enforcing the rights conferred by Section IV of the consent decree entered herein on January 29, 1936, as is provided by Section V of said Consent Decree.

(2) That a trustee be appointed to hold all the stock of Michigan Gas and all interest of Columbia Gas in said Company, and that Columbia Gas be ordered to turn over

such stock and interests to such trustee to be held by him for the benefit of the Panhandle Eastern, subject only to repayment to Columbia Gas of sums actually advanced by it for the purpose of construction of the aforesaid pipe line, less any dividends and all other moneys received directly or indirectly by Columbia Gas from profits made by said Michigan Gas and provided any balance due to Columbia Gas shall be a first charge on the assets and earnings of the trust estate.

(3) That the trustee herein, Gano Dunn, be directed forthwith to deliver up and surrender to Panhandle Eastern 80,000 shares of its capital stock received as mentioned in paragraph XIII herein, and that the defendants Columbia Oil and Columbia Gas be directed to receive in lieu thereof a security which does not in any way directly or indirectly, presently or potentially, confer on Columbia Gas any voting rights, control or participation in the management of, Panhandle Eastern.

(4) That said trustee, Gano Dunn, be directed to vote the common stock and the 100,000 shares of Class A preferred stock and the 10,000 shares of Class B preferred stock of Panhandle Eastern so that the provisions of such preferred stock may be suitably amended to eliminate any and all right of the holders thereof to vote on any matter whatever, including the election of directors.

(5) For such other and further relief as to the Court may seem appropriate under the provisions of said Section IV of said Decree.

And it will be forever prayed, etc.

Panhandle Eastern Pipe Line Company, By (Sgd.)
Arthur G. Logan. (Sgd.) Logan and Duffy, Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware. Russell Hardy, 729 Fifteenth Street, Washington, D. C. Robert J. Bulkley, Bulkley Building, Cleveland, Ohio. Arthur G. Logan, 303 Delaware Trust Building, Wilmington, Delaware, Of Counsel.

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JUNE 1931

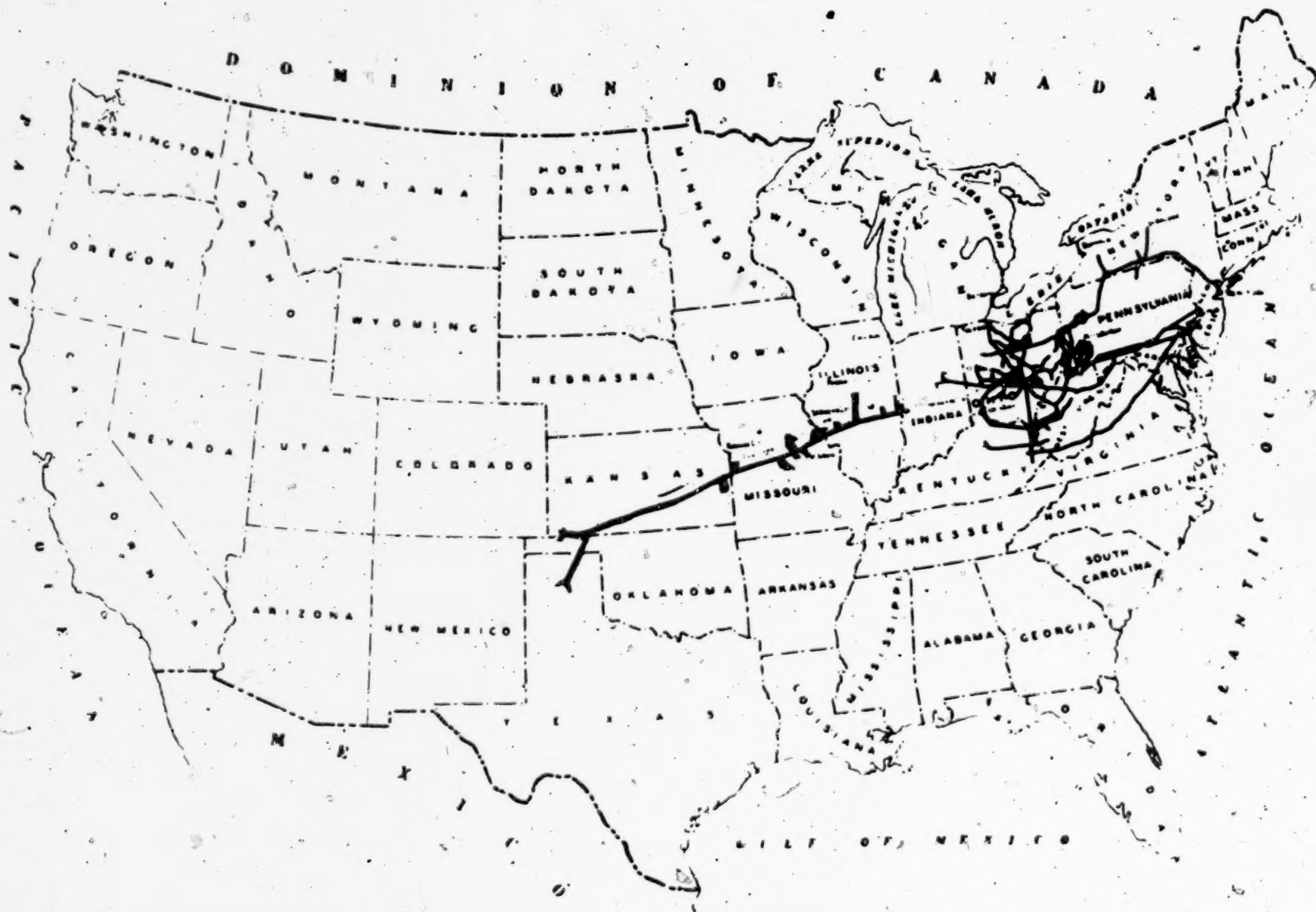
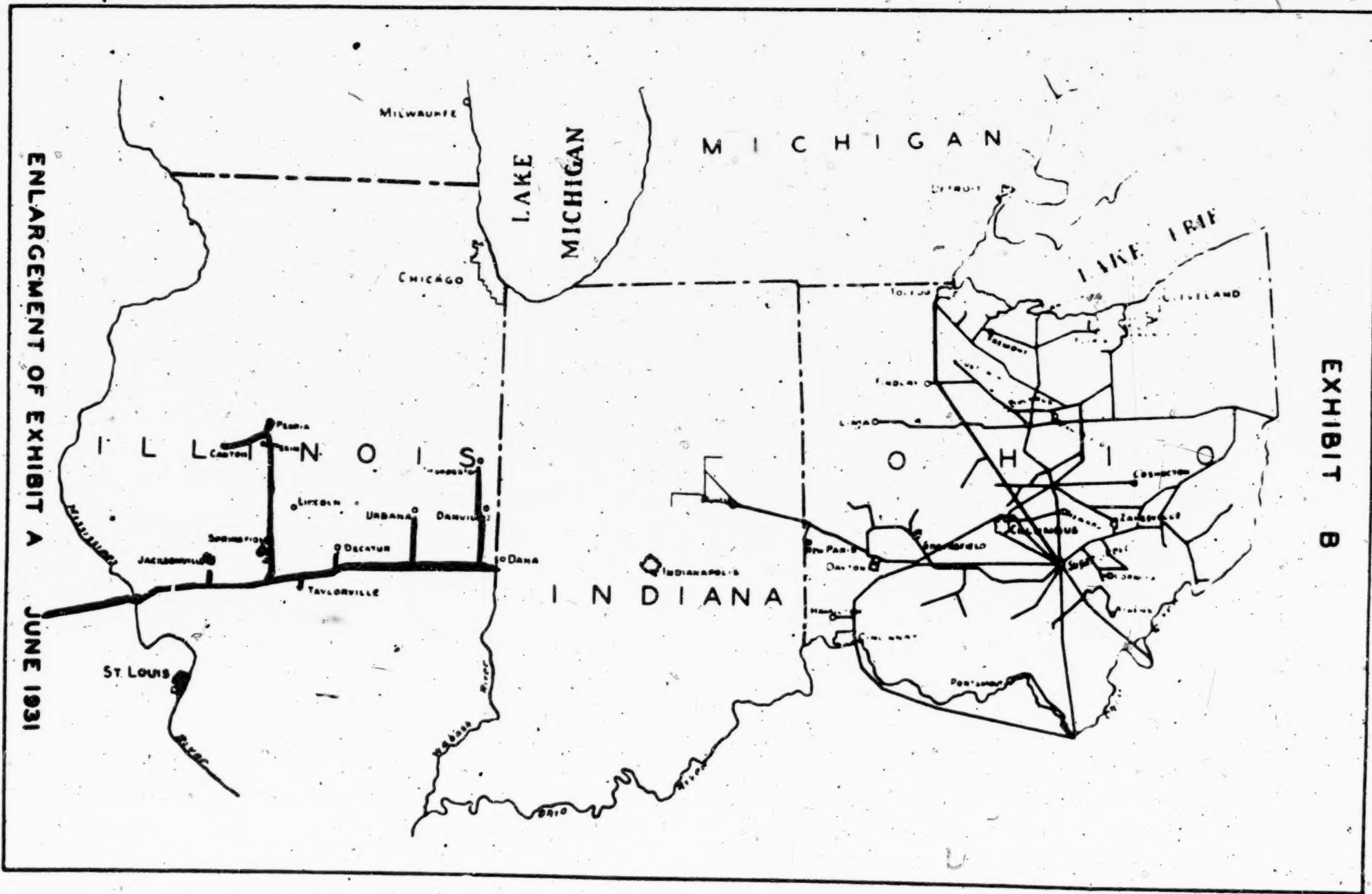


EXHIBIT A

EXHIBIT B



ENLARGEMENT OF EXHIBIT A
JUNE 1931

JANUARY 29 1936

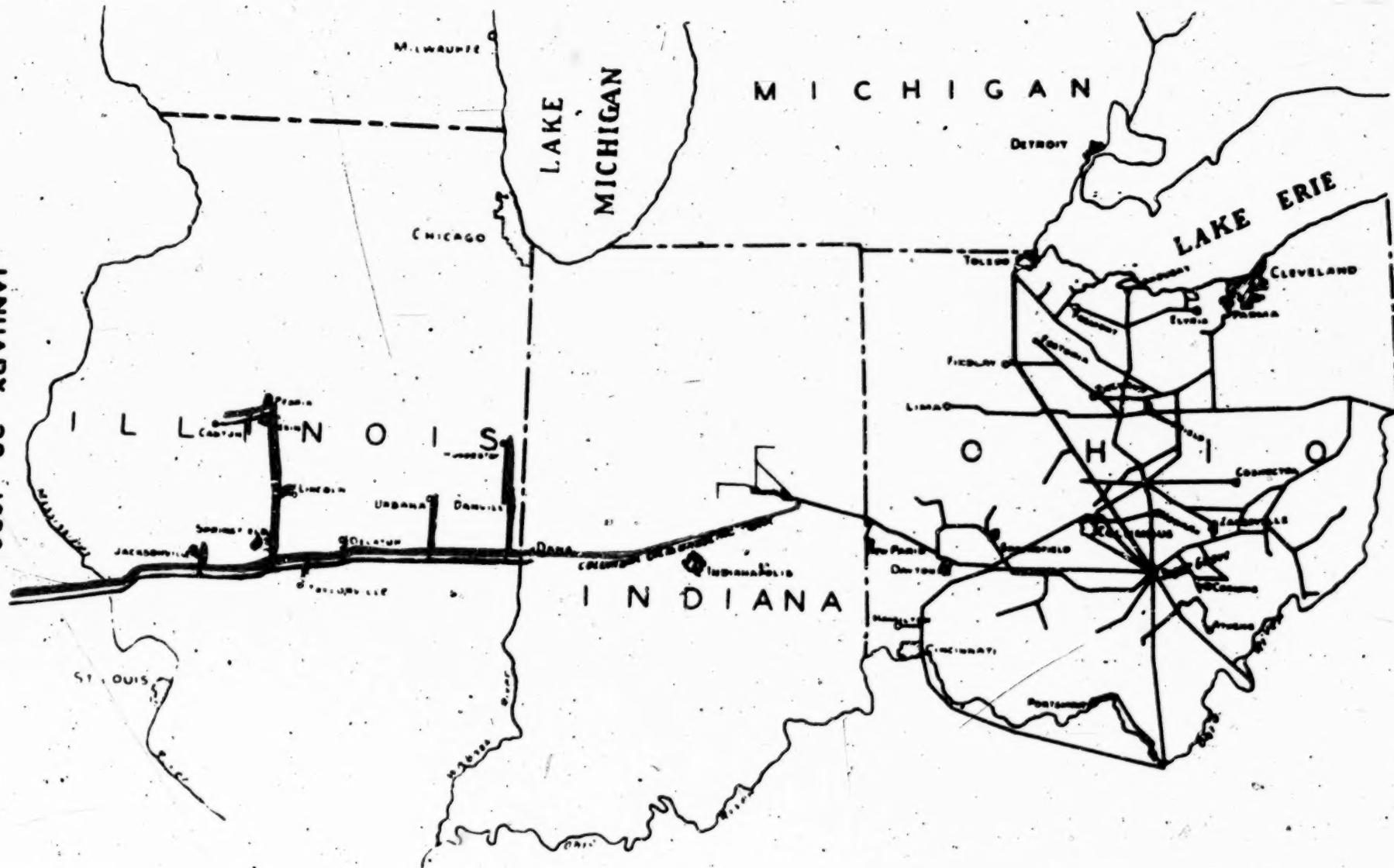
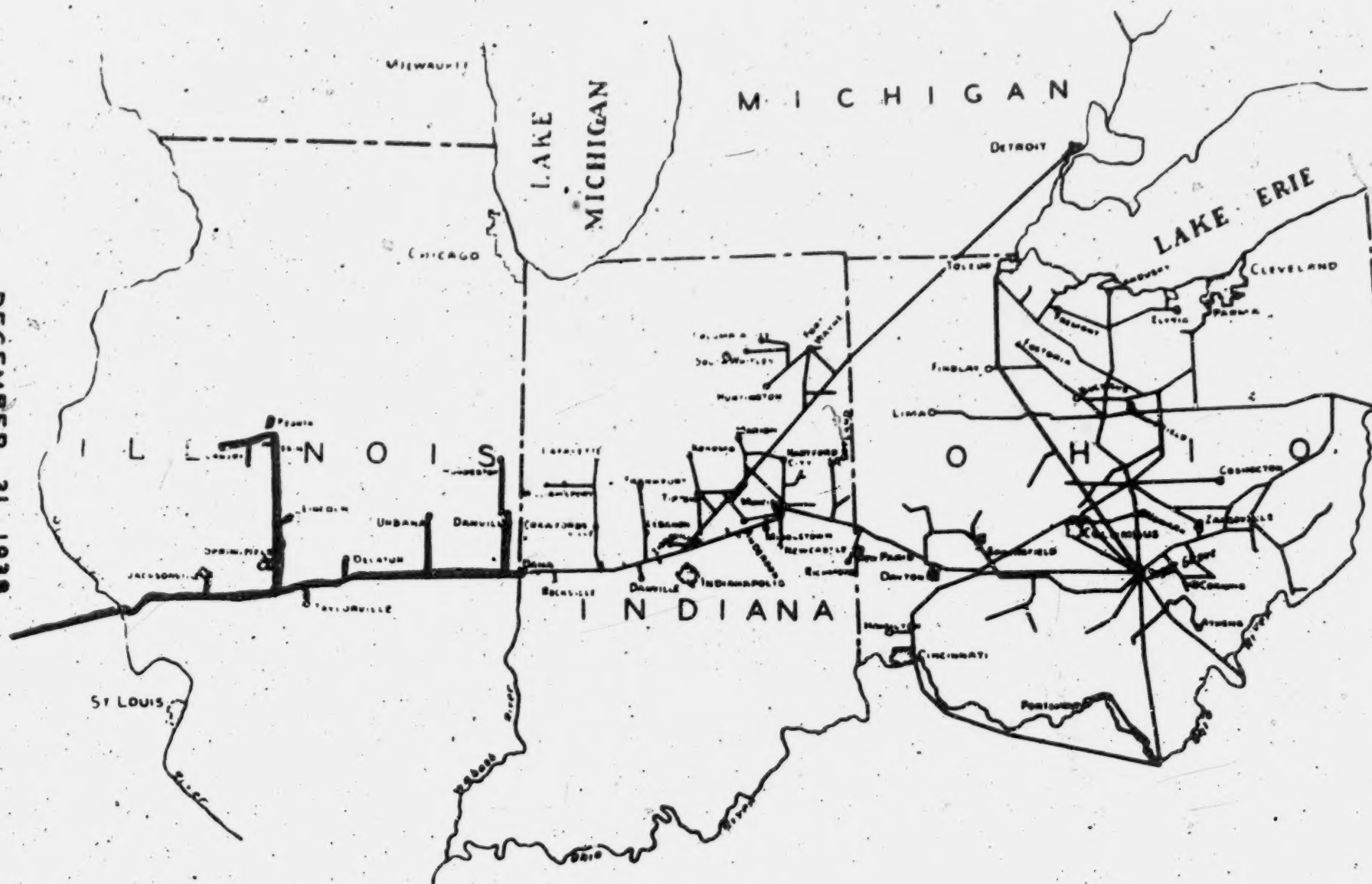


EXHIBIT C

DECEMBER 31 1938



EXHIBIT, D

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[fol. 625]

EXHIBIT "E"

Whereas by letter dated January 15, 1940 to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas this corporation, its officers and directors have failed and neglected to comply therewith in any respect; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, therefore, be it resolved that this corporation take the actions set forth and described in paragraphs 1 to 6 inclusive of said letter of January 15, 1940; and

Be it further resolved that this corporation employ and hereby do employ Robert J. Bulkely, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be it further resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

[fol. 626] IN UNITED STATES DISTRICT COURT

ORDER SETTING APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY FOR LEAVE TO INTERVENE DOWN FOR HEARING—Filed March 23, 1940

And now, to wit, this 23d day of March, A. D. 1940, upon reading and considering the application of Panhandle Eastern Pipe Line Company for leave pursuant to the provisions of Section V of the decree entered herein on the twenty-ninth day of January, A. D. 1936, to become a party hereto, for the limited purpose of enforcing the rights conferred by Section IV thereof, it is, upon motion of Arthur

G. Logan, Esq., attorney for said Panhandle Eastern Pipe Line Company,

Ordered by the Court that said application be and hereby is set down for hearing before this court at the United States Court Room in the City of Wilmington in said district on the first day of April, A. D. 1940 at ten o'clock in the forenoon, at which time and place any party in interest may appear and show cause, if any they have, why said application should not be granted.

It is further ordered by the Court that notice of the time and place of said hearing be forthwith given to the other parties to this cause, and to that end that a copy of said application and of this order be forthwith served upon said other parties or their attorneys of record.

(Sgd.) John P. Nields, J.

[fol. 627] IN UNITED STATES DISTRICT COURT

MOTION OF COLUMBIA GAS & ELECTRIC CORPORATION TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY TO BE MADE A PARTY, ETC.—Filed March 29, 1940

Columbia Gas & Electric Corporation, one of the defendants in the above-entitled cause, by Clarence A. Southerland; its attorney, now moves the Court, upon the affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson annexed hereto, to dismiss the alleged application of Panhandle Eastern Pipe Line Company, filed herein on March 23, 1940, on the ground that the alleged application is not signed or verified by Panhandle Eastern Pipe Line Company, and on the further ground that the attorneys whose names appear on the alleged application as attorneys for Panhandle Eastern Pipe Line Company are not attorneys for Panhandle Eastern Pipe Line Company, and were not authorized by Panhandle Eastern Pipe Line Company to act on its behalf.

(Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, 948 Delaware Trust Building, Wilmington, Delaware.

[fol. 628] AFFIDAVIT OF JOE D. CREVELING IN SUPPORT OF
COLUMBIA GAS' MOTION TO DISMISS APPLICATION OF PAN-
HANDLE EASTERN PIPE LINE COMPANY

STATE OF NEW YORK,
County of New York, ss:

JOE D. CREVELING, being duly sworn, deposes and says:

I am the president of Panhandle Eastern Pipe Line Company, duly elected by the duly constituted Board of Directors of Panhandle Eastern Pipe Line Company.

Arthur G. Logan, the attorney who signed the application filed on or about March 23, 1940, in the above-entitled cause, and the other attorneys whose names appear on said application acted without any authority from Panhandle Eastern Pipe Line Company in filing the application in the above-entitled cause.

The authority under which Logan and said other attorneys purport to act is a resolution which was presented to the annual meeting of stockholders of Panhandle Eastern Pipe Line Company on March 11, 1940, at which meeting I was present, and which was defeated by the majority of the stockholders present in person or by proxy at said meeting. Said meeting was duly adjourned by vote of the majority of stockholders present at said meeting in person or by proxy without any action being taken to authorize Logan or said attorneys or anyone else to file an application in the above cause on behalf of Panhandle Eastern Pipe Line Company. No action has been taken by the duly constituted Board of Directors of Panhandle Eastern Pipe Line Company to authorize Logan or said attorneys or anyone else to file an application in the above cause on behalf of Panhandle Eastern Pipe Line Company. None of the duly constituted officers of Panhandle Eastern Pipe Line Company has authorized Logan or said attorneys or anyone else to file an application in the above cause on behalf of Panhandle Eastern Pipe Line Company.

There is attached hereto a transcript of the proceedings at the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held at 19-21 Dover Green, Dover, Delaware, on March 11, 1940, certified to be a true and correct transcript by Harry J. Blam, an official shorthand reporter for the Delaware law courts. There are also attached hereto the By-laws of Panhandle Eastern Pipe Line Company and

the notice of meeting for the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, which was sent to the stockholders of Panhandle Eastern Pipe Line Company, both of which have been certified as true and correct copies by the Secretary of Panhandle Eastern Pipe Line Company.

(Sgd.) Joe D. Creveling.

Subscribed and sworn to before me this 28th day of March, 1940. (Sgd.) Frank A. Moyer. Notary Public. Notary Public, Kings Co., N. Y. Kings Co. Clk's No. 205, Reg. No. 2221. N. Y. Co. Clk's No. 574, Reg. No. 2M353. Commission expires March 30, 1942. (Notarial Seal.)

[fol. 630]

Certificate

I, HARRY J. BLAM, an official shorthand reporter for the Delaware law courts, attended the Annual Meeting of Stockholders of Panhandle Eastern Pipe Line Company held at No. 19-21 Dover Green, Dover, Delaware, on Monday, March 11, 1940, and at such meeting I correctly and accurately took and transcribed complete notes of everything that took place at such meeting; and I hereby certify that the attached document entitled "Annual Meeting of Stockholders of Panhandle Eastern Pipe Line Company held at the principal office of the Company, No. 19-21 Dover Green, Dover, Delaware, on Monday, March 11, 1940, at 2 o'clock, P. M., Eastern Standard Time." is a true and correct copy of the transcript taken by me at such meeting.

(Sgd.) Harry J. Blam.

Subscribed and sworn to before me this 28th day of March, 1940. (Sgd.) Emily M. Harrigan. (Notarial Seal.)

[fol. 631] ANNUAL MEETING OF STOCKHOLDERS OF PANHANDLE EASTERN PIPE LINE COMPANY HELD AT THE PRINCIPAL OFFICE OF THE COMPANY, NO. 19-21 DOVER GREEN, DOVER, DELAWARE, ON MONDAY, MARCH 11, 1940, AT 2 O'CLOCK, P. M., EASTERN STANDARD TIME

[fol. 632] Present:

Joe D. Creveling, President of the Corporation and Chairman of the meeting.

Leith V. Watkins, Secretary of the Corporation.

E. M. Goodwin, Esq., of Counsel for the Corporation.

Edwin D. Steel, Jr., Esq., of counsel for the Corporation.

Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Consent Decree, dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware.

Louis F. Sperry, a stockholder.

William G. Maguire, a proxy holder.

A. Faison Dixon, a proxy holder.

Arthur G. Logan, Esq., representing the Proxy Committee of W. G. Maguire and A. Faison Dixon, and also Missouri-Kansas Pipe Line Company.

Richard B. Hand, Esq., a proxy holder, and representing the Proxy Committee of W. G. Maguire and A. Faison Dixon and also Missouri-Kansas Pipe Line Company.

[fol. 633] Harold B. Howard, Esq., a proxy holder.

William C. Tringham.

Geoffrey L. Mellor, proxy holder for Howard B. Perry.

S. R. Nussenfeld.

The Chairman: The meeting will please come to order. This is an annual meeting of the stockholders of Panhandle Eastern Pipe Line Company, called and held in accordance with the laws of the State of Delaware and the by-laws of the Company.

This is the first time that we have had a stockholders' meeting in which there has been public representation. Previously we have only had two stockholders, both of which were corporations, and I wish to welcome any individual stockholder who may be here.

In view of the fact that we have not succeeded in checking all proxies against stockholders' lists, I will entertain a motion to recess this stockholders' meeting until three-
[fol. 634] thirty.

Mr. Dunn: I move that we recess until three-thirty.

The Chairman: How much stock do you represent, Mr. Dunn?

Mr. Dunn: I represent 404,326 shares of common stock, 100,000 shares of Class A Preferred, and 10,000 shares of Class B Preferred.

The Chairman: That constitutes a majority of all classes of stock. Is there a second to the motion?

Mr. Sperry: I second the motion.

The Chairman: All in favor say "aye".

Mr. Dunn: Aye.

Mr. Sperry: Aye.

The Chairman: Contrary?

We are recessed until three-thirty.

(At this point a recess was taken.)

(The meeting reconvened at six-thirty o'clock, P. M., the same day, at which time all the persons before noted were present.)

The Chairman: Mr. Secretary, have you polled the meeting now and are all present stockholders or holders of proxies?

[fol.635] Mr. Nussenfeld: I don't represent a stockholder, nor do I hold a proxy for any stockholder. I would just like to attend by sufferance.

The Chairman: Does anybody want to object?

Mr. Logan: Missouri-Kansas Pipe Line Company has an objection as a stockholder.

The Chairman: Mr. Nussenfeld, I will have to ask you to leave the meeting.

Mr. Nussenfeld: I came down from New York for the purpose of attending the meeting.

The Chairman: This is a closed meeting; I am sorry.

(At this point Mr. S. R. Nussenfeld left the meeting.)

Mr. Logan: Can you state the attendance for us at this time by groups and shares?

The Chairman: We have that coming up here right away. Would you mind having that come second instead of first? I was going to have the Secretary read the notice of the meeting and the affidavit of mailing, and then that second.

Will the Secretary read the notice of the meeting and the affidavit of mailing of such notice?

(The Secretary read the notice of the meeting and the [fol. 636] affidavit of mailing of notice to the meeting.)

The Secretary: I present to the meeting a full, true, and complete list of the stockholders of the Company entitled to vote at this meeting, arranged in alphabetical order, with the address of each said stockholder as it appeared on the stock books of the company, and the number of shares

of common stock held by each such stockholder, which list I have prepared through Chemical Bank and Trust Company, the transfer agent of the Company appointed by the Directors, as of the close of business on February 28, 1940, the date fixed by the Board of Directors for the taking of a record of the stockholders entitled to notice of, and to vote at, this meeting, and a similar list of the holders of the Class A and Class B preferred stocks of the company. These lists have been open at this office of the Company, No. 19-21 Dover Green, Dover, Delaware, for at least ten days prior to the meeting, to the examination of any stockholder.

The Chairman: I direct that these lists be kept here during the whole time of the meeting, and subject to the inspection of any stockholder present.

I will ask the Secretary to take the names of the stock- [fol. 637] holders who are present in person and of proxies representing stockholders, and to report to the meeting the number of shares of stock of the company, the holders of which are present in person or represented by proxy and entitled to vote in person or by proxy at this meeting.

The Secretary: I submit a list showing the names of all holders of common stock and of Class A and Class B preferred stocks of the Company present in person and of proxies representing the holders of such stocks not present at this meeting, and report that there are present at the meeting or represented by proxy and entitled to vote holders of 783,465 shares of the common stock of the Company out of 807,367 shares of said common stock issued and outstanding, holder of all of the 100,000 shares of the Class A preferred stock of the Company issued and outstanding, and the holder of all of the 10,000 shares of the Class B stock of the Company issued and outstanding.

The stockholders present in person are:

Gano Dunn, Trustee, 100,000 shares of Class A, 10,000 shares of Class B, and 404,326 shares of common stock,
Richard B. Hand, 10 shares of common stock.

Arthur G. Logan, present in person, but his stock is being [fol. 638] voted by proxy.

Louis F. Sperry, 50 shares.

John R. Perry, 170 shares.

Howard R. Perry, 23 shares.

Stockholders present by proxy:

William G. Maguire and A. Faison Dixon, 339,275 shares.

Leith V. Watkins and Louis F. Sperry, 5,380 shares.

William G. Maguire and A. Faison Dixon, 34,122 shares.

John J. Morris and Harold B. Howard, 109 shares.

The Chairman: The holders of 783,465 shares of common stock, 100,000 shares of Class B preferred, and the 10,000 shares of Class B preferred are in attendance at the meeting in person or by proxy and, therefore, a quorum is in attendance.

Mr. Logan: I would like to move Mr. A. Faison Dixon be made Chairman of this meeting from this time forward.

Mr. Hand: I second the motion.

The Chairman: Where is a copy of the by-laws?

Mr. Logan: I might say the by-laws state that the President shall act as Chairman, but the Court of Chancery has held that a meeting of stockholders can elect its own Chair-[fol. 639] man at any time, as Mr. Steel will advise you.

Mr. Steel: I am not familiar with those decisions, Mr. Logan.

Mr. Logan: For the record, Mr. Steel, I will refer you to the opinion of the Chancellor in *Duffy v. Loft*, 17 Delaware Chancery 140; 101 Atlantic 223; 17 Delaware Chancery 376; 150 Atlantic 849.

The Chairman: The Chair rules the motion is out of order in view of the provision of the by-laws.

Mr. Logan: I appeal the ruling of the Chair to the floor.

The Chairman: The next order of business is—

Mr. Logan: I certainly insist upon my right to have an appeal from the ruling of the Chair to the floor.

The Chairman: In what form?

Mr. Logan: In the form of a vote.

The Chairman: By shares?

Mr. Logan: Yes, by shares.

Mr. Dunn: What is the motion before the house?

The Chairman: I think that is all right. I rule that you have that right.

Mr. Logan: I call attention of the Corporation to the fact [fol. 640] that Mr. Gano Dunn cannot vote on this motion.

I now call for the question.

Mr. Gano Dunn is a stockholder, as the stock records show of stock owned by Columbia Oil & Gasoline Corporation under a specific trust which is referred to on the stock list. He has no right to vote any question except where he has the instruction from the beneficial owners thereof which is Columbia Oil & Gasoline Corporation. That is pro-

vided in Paragraph 3-B of the decree which, after the question with respect to voting on the Directors, provides this: "To vote said stock upon all other questions and matters in which the stock is entitled to vote as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree."

There is nothing here inconsistent with the purposes of the decree, and he is not permitted by the express terms of his trust, which is a record of this corporation, to vote on this motion.

Mr. Dunn: What is the motion, Mr. Chairman?

The Chairman: An appeal from the ruling of the Chair.

Mr. Dunn: Put it in form.

[fol. 641] The Chairman: That Mr. A. Faison Dixon be elected Chairman of this meeting. Is that correct, Mr. Logan?

Mr. Logan: That is correct.

The Chairman: It is an appeal from the ruling of the Chair.

Mr. Dunn: I would like to have the motion put so I can understand it.

Mr. Logan: The motion originally was that Mr. A. Faison Dixon be made Chairman of this meeting to serve as Chairman from this time forward and at all times during the meeting. The Chair refuses to entertain that motion. The Chair ruled against the motion and I have appealed from the ruling of the Chair to the floor. The Chair has agreed that the appeal shall be had to the floor by a stock vote, and I request that the appeal be submitted to a stock vote, and I point out that Mr. Dunn cannot vote on that motion.

Mr. Dunn: Then your motion really is, Shall the Chair be supported?

The Chairman: I want to call your attention to the fact that my ruling is because of this:

"The President shall be the chief executive officer of the [fol. 642] corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the Board are carried into effect."

That is Section (a) of 25 of the by-laws of Panhandle Eastern Pipe Line Company.

I also call your attention to the fact that in Section 42 of the by-laws provision for amendments is made as follows:

"These by-laws may be altered or amended by the affirmative vote of a majority of the stock issued and outstanding and entitled to vote at any regular or special meeting of the stockholders, if notice of the proposed alteration or amendment be contained in the notice of the meeting, or by the affirmative vote of a majority of the Board of Directors; provided, however, that no change of the time or place for the election of directors shall be made within sixty days next before the day on which such election is to be held."

These have not been complied with; therefore, I ruled as I did.

Mr. Dixon: Question. There is a motion before the [fol. 643] house.

Mr. Logan: There is an appeal from the ruling of the Chair before the house.

The Chairman: I ask for a vote of the stockholders present to sustain the Chair.

Mr. Logan: Question.

The Chairman: Those in favor of sustaining the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: I would like to put a question as to whether or not Mr. Dunn is voting at the request of the Columbia Oil & Gasoline Corporation.

Mr. Dunn: I am.

Mr. Logan: Have you been directed by the Columbia Oil & Gasoline Corporation to vote as you now are voting on this appeal?

[fol. 644] Mr. Dunn: Yes, I am.

Mr. Logan: Do you have that in writing?

Mr. Dunn: No.

Mr. Logan: Who gave you that direction?

Mr. Goodwin: "Don't answer any more questions; you don't have to.

Mr. Logan: We have a right to know whether this Chairman is entitled to act as Chairman from now on. We may proceed with our own Chairman and conduct the meeting if he is not legally and duly Chairman.

Mr. Goodwin: Suit yourself. You record your protest for what it is worth.

Mr. Logan: We have a right to know whether Mr. Dunn is voting under the terms of his decree or violating it. If he is violating it his vote cannot be counted.

Mr. Dunn, will you answer what directions you have from Columbia Oil & Gasoline Corporation?

The Chairman: We will proceed with the meeting.

Mr. Logan: No, you won't.

The Chairman: The majority will.

Mr. Logan: I move that Mr. A. Faison Dixon be elected Chairman of this meeting by a yive voce vote.

[fol. 645] All in favor signify by saying aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Logan: Aye.

Contrary?

Mr. Dixon, you are Chairman of the meeting. I suggest you step forward and take the Chair.

The Chairman: The next order of business is the appointment of the judges for this meeting and all adjournments thereof, to decide upon the qualifications of voters, to canvass and accept the votes that may be taken at this meeting upon any matters that may come before the stockholders for action thereat and to make reports thereon.

Mr. Logan: Mr. Creveling, do you refuse to relinquish the Chair?

The Chairman: I do.

Mr. Logan: Mr. Creveling, Mr. Dixon is now seeking to take the Chair.

The Chairman: Have your meeting in another room.

Mr. Logan: Do you refuse to surrender the Chair?

[fol. 646] The Chairman: Yes.

Mr. Dixon: You refuse to give me the Chair?

The Chairman: That is correct.

Mr. Logan: All right. Now, Mr. Creveling, I will now

advise you that those who voted for Mr. Dixon to act as Chairman of this meeting will, as soon as you relinquish the Chair, whether it be today or as long as you want to sit there, continue with the meeting and have a proper meeting.

The Chairman: Mr. Thomas M. Keith and Mr. Leonard G. Hagner have spent the past few hours re-checking and re-tabulating the proxies. Will somebody please move the adoption of a resolution appointing these gentlemen as judges to act at this meeting and all adjournments thereof?

Mr. Dunn: I so move.

Mr. Sperry: I second the motion.

The Chairman: It has been moved and seconded that Thomas M. Keith and Leonard G. Hagner shall be appointed to act as judges of this meeting and all adjournments thereof. All those in favor say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

The motion is carried.

[fol. 647] Mr. Hand: May I ask if in voting on that appointment Mr. Dunn is acting on the instructions of Columbia Oil & Gasoline Corporation?

The Chairman: The motion has been carried.

Mr. Hand: May I have the record show Mr. Goodwin advised Mr. Dunn not to answer the question.

Mr. Logan: I want to call the attention of the Chairman to the fact that Mr. Dunn is a stockholder, and the records show a stockholder by an express trust referred to in the stock lists. That express trust restricts him from casting any vote on any matter whatsoever except as directed by the beneficial owners of the stock; namely, Columbia Oil & Gasoline Corporation. I demand that he state any time he votes on any matter whether or not Columbia Oil & Gasoline Corporation directed him to do so, and if so, whether orally or in writing, the person who gave him the directions, the time when they were given, and any details he feels pertinent to prove that he did get such direction, and in the absence of any full statement showing his right to vote, we challenge any action or vote he takes.

The Chairman: The motion has been carried. Mr. Thomas M. Keith and Mr. Leonard G. Hagner have been [fol. 648] appointed judges. Will they please subscribe an oath to discharge their duties faithfully and will the

Secretary please incorporate such oaths when so subscribed in the minutes of the meeting?

(The oath was duly subscribed to by the Inspectors.)

The Chairman: The Secretary will please deliver to the judges the lists of stockholders of the company and the proxies which have been submitted to you for examination by them. After the judges have completed their examination, please file and preserve said lists and proxies among the records of the Company.

Will you look over, examine, and check those lists now please?

Mr. Keith: May I ask you if the list which you now turned over includes in here the ones which were rejected by the Inspectors in their work?

The Secretary: It does.

Mr. Keith: I think we should have the entire record of those accepted and rejected.

Mr. Maguire: Would you mind telling us how many stockholders there are besides the shares—

The Chairman: May we not proceed with the reading of the minutes of the last meeting by the Secretary while the [fol. 649] judges are making their report?

Mr. Logan: Yes, surely.

The Chairman: Mr. Secretary, will you please read the minutes of the last annual meeting of the stockholders of the company held on March 13, 1939.

The Secretary: (Reading) "The Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, was held at the office of the Company, No. 90 Broad Street, New York, N. Y., on Monday, March 13, 1939, at 10:00 o'clock A. M., pursuant to due consent and waiver of notice signed by all the Stockholders of the Company.

The President of the Company, Mr. Joe D. Creveling, called the meeting to order and presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as Secretary of the meeting.

The Secretary presented to the meeting the consent and waiver of notice, signed by all of the Stockholders of the Company."

Then follows the consent and waiver of notice.

Do you want me to read the list of stockholders present?

Mr. Logan: Yes, let us see how Mr. Dunn appears.

[fol. 650] The Secretary: (Reading)

Name and Address	No. of Shares		
	Class A	Class B	Common
Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree, dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware. 80 Broad Street, New York, N. Y.	100,000	10,000	404,326
Missouri-Kansas Pipe Line Company, 120 Broadway, New York, N. Y.	324,326
Total Shares	100,000	10,000	728,652

Mr. Logan: You show Mr. Dunn as Trustee under the express trust.

The Secretary: The record shows that.

(Continuing to read.)

The Chairman directed the Secretary to take the names of the stockholders present in person or represented at the [fol. 651] meeting by Proxy. The Secretary, having done so, reported that there were present Mr. Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree, dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware, the holder of record of all the issued and outstanding Preferred Stocks of the Company and 404,326 shares of the issued and outstanding Common Stock of the Company, and Messrs. William G. Maguire and Kenneth E. Walser, as Proxies for Missouri-Kansas Pipe Line Company, the owner of the remaining 324,326 shares of the issued and outstanding Common Stock of the Company, which constituted the entire stock of all classes outstanding and entitled to vote at the meeting. The Chairman thereupon announced that a quorum was present.

Acts and Proceedings of the Officers and Board of Directors of the Company

The Chairman then stated that it would be in order for the Stockholders to approve, ratify and confirm the acts and proceedings of the officers and the Board of Directors as set forth in the minutes of the meetings of the Board of

Directors since the last Annual Meeting of the Company, all the said minutes being present at the meeting. There- [fol. 652] upon, the following resolution was presented and adopted by a majority vote, Messrs. William G. Maguire and Kenneth E. Wakser voting no:

Resolved that the acts and proceedings of the officers and Board of Directors of this Company as set forth in the minutes of the meetings of the Board of Directors since the last Annual Meeting of the Company be in all respects approved, ratified and confirmed.

Annual Reports

The President and the financial and accounting officers of the Company then made oral annual reports and stated that all of the matters so reported had been included in the printed annual report previously distributed to the stockholders. Whereupon, on motion duly made, seconded and unanimously adopted, the annual reports of the President and the financial and accounting officers as presented to this meeting were in all respects approved, ratified and confirmed."

Mr. Maguire: That is not correct, because we kicked about that annual statement, and if you refer to the minutes in the Directors' Meeting, we did not think it was correct, [fol. 653] and my recollection is that I voted no. I am afraid I am going to have to vote against that.

The Chairman: As far as I recall it, you said as far as the Annual Report was concerned, you said, "I will vote for that."

Mr. Logan: It gives an implication further than Mr. Maguire wants. Read it again.

The Secretary: (Reading.) "The President and the financial and accounting officers of the Company then made oral annual reports and stated that all of the matters so reported had been included in the printed annual report previously distributed to the stockholders. Whereupon, on motion duly made, seconded, and unanimously adopted, the annual reports of the President and the financial and accounting officers as presented to this meeting were in all respects approved, ratified and confirmed."

The Chairman: That is referring to the Annual Report. The approval, as I understand it, goes to the written re-

port. Now, Mr. Maguire, it is my recollection that you agreed to approve and vote with the others on the approval of the Annual Report. If you have a contrary recollection, I see no objection to correcting this.

[fol. 654] Mr. Maguire: I wish you would.

The Secretary: I am positive that both the stockholders received copies of the minutes of the meeting very shortly after the meeting was held, and there has been no objection.

The Chairman: Let us go on with the remainder of the reports and come back to this point later.

The Secretary: (Reading) "The minutes of the last Annual Meeting of the Stockholders having been read, it was unanimously

Resolved that the minutes of the last Annual Meeting of the Stockholders of this Company, held March 14, 1938, be and hereby are in all respects approved.

Election of Directors

The Chairman then stated that it would be in order to proceed with the election of Directors of the Company for the ensuing year. Thereupon, on motion duly made and seconded, it was unanimously

Resolved that the use of Judges of Election be dispensed with and that the meeting proceed to the election, by ballot, [fol. 655] of Directors to serve for the ensuing year and until their successors shall have been elected and qualified.

Nominations having been called for, Mr. Gano Dunn, the Trustee, nominated Messrs. John E. Bierwirth, Joe D. Creveling, Gano Dunn and Walter G. Mortland, and Messrs. William G. Maguire and Kenneth E. Walser. Messrs. A. Faison Dixon, William G. Maguire and Kenneth E. Walser as Directors representing Common Stock. Mr. Gano Dunn, the Trustee, then nominated Messrs. Joseph A. Bower and Robert C. Winmill as Directors representing the Class B. Preferred Stock and all nominations were then duly seconded.

There being no other nominations, the nominations were, on motion duly made, seconded and unanimously carried, closed, and the Chairman declared the polls open.

All of the Stockholders of the Company present or represented at the meeting, and entitled to vote thereat for

the election of Directors, having voted, the Chairman ordered the polls closed and directed the Secretary to canvass the votes cast. Messrs. William G. Maguire and Kenneth E. Walser, as Proxies for Missouri-Kansas Pipe Line Company, objected to the election of Directors by the Class B Preferred Stock upon the grounds that said stock was [fol. 656] issued and the beneficial ownership thereof is held by Columbia Oil & Gasoline Corporation and through it by Columbia Gas & Electric Corporation in violation of the Consent Decree dated January 29, 1936. The Secretary having canvassed the votes reported that the votes cast for the Directors of this Company, each to serve until the next Annual Meeting of the Stockholders of the Company or until his successor is elected and shall qualify, were as follows:

Name	Votes Received
Elected by Common Stock:	
John E. Bierwirth	707,571
Joe D. Creveling	707,571
Gano Dunn	707,570
Walter G. Mortland	707,570
A. Faison Dixon	756,761
William G. Maguire	756,761
Kenneth E. Walser	756,761
Elected by Class B Preferred stock:	
Joseph A. Bower	10,000
Robert C. Winmill	10,000

The Chairman thereupon announced that the following gentlemen had been elected Directors of the Company for [fol. 657] the ensuing year:

Messrs. John E. Bierwirth, Joseph A. Bower, Joe D. Creveling, A. Faison Dixon, Gano Dunn, William G. Maguire, Walter G. Mortland, Kenneth E. Walser and Robert C. Winmill.

Organization Meeting of the Board of Directors

The Chairman then stated that it would be in order to fix the place and time of the Organization Meeting of the newly elected Board of Directors. Thereupon, on motion duly made and seconded, it was unanimously

Resolved that the Regular Monthly Meeting of the Board of Directors to be held Wednesday, March 15, 1939, at 3:30

o'clock P. M., at No. 90 Broad Street, New York, New York, be also the meeting of the Board elected at this meeting of [fol. 658] the Stockholders for the purpose of organization or otherwise.

Adjournment

There being no further business to come before the meeting, it was, on motion duly made and seconded and unanimously carried, adjourned.

Leith V. Watkins, Secretary."

The Chairman: As I understand it, Mr. Maguire's memory is to the effect that he did not approve all the acts and so on of the officers and directors?

Mr. Maguire: That is correct..

The Chairman: And my remembrance is the same as Mr. Maguire's on that. So far as approving the annual report as sent out by the President under the authorization of the Board of Directors, it is my remembrance that that was unanimously approved.

Mr. Hand: Do you think that went to form, Mr. Craveling?

The Chairman: I didn't get the question.

Mr. Hand: Do you think that approval went to the form of the document rather than the intention to approve the acts?

[fol. 659] The Chairman: I think it was to approve the contents of the document.

Mr. Logan: Wasn't it, if an approval, an approval of the statements in there, but not an approval of the actions of the officers?

The Chairman: Of all the actions of the officers and Board of Directors, I think that is right.

Mr. Logan: It merely might mean that the statements contained in it were accurate, but that the actions of the officers, including the President, were not approved because of the approval of that particular letter. Wouldn't that be your understanding?

The Chairman: It was my very definite understanding that the thing that was approved unanimously was the Annual Report as it was submitted, which, of course, would be the statements in the Annual Report, and that, I think, you did approve, Mr. Maguire.

Mr. Logan: That is all right.

The Chairman: And all of the acts of the officers and directors, Mr. Maguire and the other proxy did not approve. [fol. 660] Mr. Logan: That is satisfactory.

The Secretary: The Resolution preceding that so states.

The Chairman: That is what this should show. With that understanding, I should like a motion to approve the minutes of the last Annual Meeting of stockholders.

Mr. Dunn: I move they be approved.

Mr. Sperry: I second the motion.

The Chairman: Any further comments on that?

Before we vote on that, is it clear from your standpoint, Mr. Maguire?

Mr. Maguire: As you stated it, if the Stenographer got it down.

The Chairman: That was my understanding.

All those in favor say "aye".

Mr. Dunn: Aye.

Mr. Sperry: Aye.

The Chairman: Contrary?

The motion is carried.

Mr. Logan: Mr. President, I notice that Mr. Dunn voted in favor of that motion. In fact, he made the motion and you accepted his motion. I would like to ask Mr. Dunn if he voted in accordance with the directions from Columbia [fol. 661] Oil & Gasoline Corporation. I also want the record to show that Mr. Dunn asked Mr. Goodwin what reply he should make. In view of that I would like to ask Mr. Goodwin if he is acting as counsel for the company or counsel for Mr. Dunn in this meeting.

Mr. Dunn: I object to that, because I did not ask Mr. Goodwin.

Mr. Logan: You turned to Mr. Goodwin.

Mr. Dunn: You are putting words in my mouth.

Mr. Dixon: You didn't ask by words, but you asked by signal.

Mr. Logan: Mr. Dunn, didn't you turn to Mr. Goodwin for instructions?

Mr. Goodwin: I volunteered the suggestion.

Mr. Logan: He did turn to you, did he not, Mr. Goodwin?

Mr. Goodwin: Yes.

Mr. Logan: Now, may I ask whether or not you are voting with directions from Columbia Oil & Gasoline Corporation, as the trust limits your rights—

The Chairman: I didn't get that.

Mr. Logan: As the Trust Agreement, which is a part of the records of this corporation, shows the limitations [fol. 662] upon his rights, the limitations being that he cannot vote the stock held by him except "as directed by the beneficial owners thereof," which beneficial owners happen to be, as the record show, Columbia Oil & Gasoline Corporation. I demand that the Chair ask Mr. Dunn each time he votes whether or not he has these directions, and if so that he indicate to the meeting in what nature he has them, when he received them, and if in writing that he produce them.

Mr. Dunn: I object to answering the question in that form.

Mr. Steel: Can't it be assumed that he has the instructions unless he states to the contrary?

Mr. Logan: No, it cannot.

Mr. Goodwin: As counsel for the Company, I advise the Company that he is not bound by the consent decree and that has nothing to do with it.

Mr. Logan: Mr. Goodwin, you are overlooking the fact that this stock stands of record with the name of the Trustee, with the Trust Agreement referred to, and showing the limitations upon it, and put on notice as to his express limitations. That being the case, I think we must insist upon a ruling.

[fol. 663] The Chairman: Mr. Dunn, I understand that you understand your rights as Trustee and that in casting votes at this meeting you are within your rights in so doing?

Mr. Dunn: I am.

Mr. Logan: Now, by that, Mr. Dunn, do you mean that every time you vote you are doing so through express direction from Columbia Oil & Gasoline Corporation?

Mr. Dunn: I decline to answer the question in that form.

Mr. Logan: In what form would you answer such a question?

Mr. Dunn: Same objection.

Mr. Logan: Mr. Dunn, would you state your position in connection with your voting?

Mr. Dunn: No.

Mr. Logan: You will not state your position?

Mr. Dunn: Except that I have a right to vote as I am voting, and I am voting within my rights.

Mr. Steel: As counsel for the Company, Mr. Dunn, may I

make this inquiry of you? You will not vote unless you conceive yourself to be voting properly and in accordance with the terms of the Trust Agreement?

[fol. 664] Mr. Dunn: I will not.

Mr. Steel: And in any circumstances where you conceive you are not entitled to vote under the terms of the Trust Agreement, I assume you will not vote?

Mr. Dunn: I will not vote.

Mr. Logan: By that are we to assume, as you stated earlier, Mr. Steel, that every time Mr. Dunn votes we rest upon the assumption that he is doing so pursuant to directions from Columbia Oil & Gasoline Corporation?

Mr. Steel: Make any assumptions you want to. I think from the Company's standpoint the answers to my queries are entirely satisfactory.

Mr. Logan: A few minutes ago you asked if I would accept that assumption. I would like to know if you and the corporation are now laboring under that assumption. Would you answer my question?

Mr. Steel: I will not answer the question.

Mr. Logan: Then do I understand that the Corporation is taking the position that it will not inquire as to whether or not Mr. Dunn is acting under direction from Columbia Oil & Gasoline Corporation, as the Consent Decree provides, and as the records of this corporation show is limited?..

[fol. 665] Mr. Steel: It is taking the position that Mr. Dunn has made his views and his actions entirely clear to the Corporation.

Mr. Logan: Is that the ruling of the Chair?

The Chairman: It is.

Mr. Logan: I appeal from the ruling of the Chair to the floor.

Mr. Hand: If you will permit me to offer an objection, I would like it on the record. I object to any vote being received from Mr. Dunn unless evidence of his authority to vote is presented to the meeting.

Mr. Logan: I appeal from the ruling of the Chair to the floor as to whether or not this corporation should accept Mr. Dunn's vote without proof from him that he is voting in accordance with the directions from Columbia Oil & Gasoline Corporation.

The Chairman: I believe Mr. Dunn has stated that he will vote only on those questions on which he has authority as Trustee. If you would like to have that put to a vote, I shall do it.

Mr. Logan: Yes.

Mr. Steel: What is the motion?

[fol. 666] The Chairman: Appeal from the ruling of the Chair.

Mr. Logan: The precise motion will raise this question—

Mr. Sperry: Why don't you have your appeal read?

Mr. Dunn: Put the motion clearly so we will understand whether we will vote to sustain the Chair or reverse the Chair.

Mr. Logan: Mr. President, I now move that this Corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil & Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers. That is my motion.

Mr. Hand: I second it.

The Chairman: I rule the motion out of order.

Mr. Logan: I appeal from the ruling of the Chair.

The Chairman: Those in favor of sustaining the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Those against sustaining the Chair say no.

[fol. 667] Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is sustained.

Mr. Logan: In that connection I say that the vote of Mr. Dunn must be cast out, because it is obvious, certainly, to the Chair that Mr. Dunn has no directions from Columbia Oil & Gasoline Corporation to vote upon that particular appeal from the Chair's ruling.

The Chairman: I assume you are going to hold another

meeting anyway, so I suggest that we proceed with the report of the judges, if they are ready.

I call for the report of the judges.

Mr. Logan: I ask you, Do you accept the vote of Mr. Dunn on that last appeal from the Chair?

The Chairman: I do.

Mr. Logan: Mr. Dunn, may I ask you whether you were directed by Columbia Oil & Gasoline Corporation to so vote as you just voted?

[fol. 668] Will you answer, Mr. Dunn?

Will the record show that Mr. Dunn refuses to answer?

Mr. Keith: Mr. Chairman—

Mr. Logan: Just a moment, please.

Mr. Keith: The Chairman called for the report of the judges.

Mr. Logan: I will keep the floor if I want to keep it. There is nobody here that can stop me. Don't try to walk over me that way. When I get through talking, you may have the floor. I will proceed orderly. The Chairman is not going to make me stop when I am in the midst of a speech in support of the motion.

Mr. Keith: Shall I proceed, Mr. Chairman?

The Chairman: Yes, proceed.

Mr. Keith: The following is the report of the judges:

Panhandle Eastern Pipe Line Company

First Report of Judges

Dover, Delaware

March 11, 1940.

We, the undersigned, duly appointed Judges to act at the Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, held at [fol. 669] the principal office of the Company, No. 19-21 Dover Green, Dover, Delaware, on March 11, 1940, at 2:00 o'clock P. M., and at all adjournments thereof,

Do Report

that the holders of record of stock of the Company having voting power, in the amounts given below, are present and

qualified to vote at said meeting in person or by proxy as follows:

Name and Address In Person	No. of Shares		
	Preferred Class A	Class B	Common
Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation appointed pursuant to Decree dated January 29, 1936 in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware	100,000	10,000	404,326
Richard B. Hand.			
Arthur G. Logan (Not voting in person but by proxy)			10
Louis F. Sperry			50
Total Present in Person.....	100,000	10,000	404,386

[fol. 670]

Name and Address By Proxy	No. of Shares		
	Preferred Class A	Class B	Common
William G. Maguire and A. Faison Dixon as proxies for Missouri Pipe Line Company			339,275
Leith V. Watkins and Louis F. Sperry as proxies for stockholders as per proxies presented			5,380
William G. Maguire and A. Faison Dixon as proxies for stockholders as per proxies presented			34,122
John J. Morris and Harold B. Howard as proxies for stockholders as per proxies presented			109
Geoffrey R. Mellor as proxy for Howard R. Perry			23
W. C. Tringham as proxy for John R. Perry			170
Total Present and Represented.....			379,079

Respectfully submitted,

Thomas M. Keith, Leonard G. Hagner, Judges.

[fol. 671] . The Chairman: Gentlemen, you have heard the number of shares of the different classes of stock reported by the judges, and that report will be filed.

The next order of business is the election, by cumulative voting by ballot, of nine directors of the Company to serve for one year or until their successors are elected and qualified. In accordance with the Certificate of Incorporation of the Company, as amended to date, seven of the nine directors so to be elected are to be elected by the holders of common stock and two by the Class B preferred stock.

Do I hear any nominations for directors to represent the common stock?

Mr. Dunn: I move to nominate Gano Dunn, Joe D. Creveling, Joseph A. Bower and Robert A. Windmill for the common stock.

Mr. Logan: Mr. Dunn, you have nominated them as Trustee. You are familiar, I assume, with the terms of your Trust which provide in Paragraph 3-a that you shall nominate persons from among persons recommended by the beneficial owner of said stock; namely, Columbia Oil & Gasoline Corporation, in conference and with the advice of the Trustee. I want to ask you if these people you have [fol. 672] nominated have been nominated and if they are persons who were recommended by Columbia Oil & Gasoline Corporation after a conference between you and Columbia Oil & Gasoline Corporation.

Mr. Dunn: They are.

Mr. Logan: May I ask if they recommended any more than the four you have named to you to propose and vote for?

Mr. Steel: Is that with respect to the common stock?

Mr. Logan: Yes.

Mr. Dunn: I don't acknowledge your right to ask me that question.

Mr. Logan: Mr. Dunn, the Trust provides that they shall be persons selected "from among persons recommended." I am now asking you, therefore, whether there were any other persons recommended.

Mr. Dunn: And I say that they are among persons recommended to me by Columbia Oil & Gasoline Corporation.

Mr. Logan: By that do you mean that there were more?

Mr. Sperry: I second the motion.

Mr. Logan: There is no motion.

Mr. Sperry: I second the nominations.

[fol. 673] Mr. Logan: I ask you whether there were any other persons recommended by them to you.

Mr. Dunn: I don't acknowledge your right to ask me that question.

Mr. Logan: Do you have a list that they gave you of persons?

Mr. Dunn: I don't acknowledge your right to ask me that question.

Mr. Logan: You realize, Mr. Dunn, I am asking whether or not the persons you have nominated can qualify due to the express terms of the Trust.

Mr. Dunn: They can.

Mr. Logan: And I am asking you whether or not they are among persons recommended by Columbia Oil & Gasoline Corporation, and if so, who are the other persons?

• Mr. Dunn: I say that they are, and I decline to acknowledge your right to ask me further about it.

Mr. Logan: When were they recommended to you?

Mr. Dunn: I decline to answer that question.

The Chairman: Let me get the answer. You say that they are among—

Mr. Dunn: Among persons recommended to me.

[fol. 674] The Chairman: These are persons among a list of names? There were others, but you refuse to say what others?

Mr. Dunn: That is right.

Mr. Logan: Will you produce that list?

Mr. Dunn: You put the word "list" in my mouth. They are among persons recommended to me.

Mr. Logan: Mr. Creveling put the word "list" in your mouth.

The Chairman: I am trying to develop that these are out of more than four names.

Mr. Dunn: That is correct.

Mr. Logan: How many more names?

Mr. Dunn: I decline to answer. That is my affair as Trustee and my responsibility.

The Chairman: Are there any other nominations?

Mr. Logan: I have a right to find out whether they were selected in conference and with the advice of the Trustee.

Mr. Dunn: I say they were.

Mr. Logan: When was that conference?

Mr. Dunn: I decline to answer. You have no right to ask me that question.

[fol. 675] Mr. Logan: What advice did you give to these men?

Mr. Dunn: I decline to answer.

Mr. Logan: Did you recommend or did they talk about Mr. Bierwirth?

Mr. Goodwin: All this is out of order.

Mr. Logan: We have a right to know.

The Chairman: He has answered that, I think. This is out of order. I developed that answer for you, that this is from more than four names.

Are there any further nominations?

Mr. Logan: Mr. President—I address you as President and I am also addressing Mr. Dixon, the Chairman of the meeting—I now move that Article 11 of the By-laws be amended by having the same stricken out and there being substituted in lieu thereof the following:

11. The property and business of this Corporation shall be managed by its Board of Directors, consisting of fourteen persons. Directors need not be stockholders. They shall be elected at the Annual Meeting of Stockholders and each Director shall be elected to serve for one year or until his successor shall be elected and shall qualify. If the number of directors shall be increased by vote of the Board, the [fol. 676] Board may elect new directors to complete the membership in the Board and such directors so elected shall hold office until the next annual meeting of the stockholders. The directors may fill vacancies created by resignations, death, or refusal to serve of any member elected by the stockholders.

And I move that Article 42 be stricken out.

Mr. Hand: I second the motion.

The Chairman: I rule that that motion is out of order in view of the express provision as to how to amend the By-laws as provided in Article 42.

Mr. Logan: I have to point out to you, Mr. Creveling, that Section 12 of the Delaware Corporation Law gives the right, regardless of what the Directors may have put in the By-laws—with respect to amendment, Section 12 gives the right to the stockholders to amend the By-laws, and cases support that.

The Chairman: The motion is out of order.

Mr. Logan: You say the motion is out of order?

The Chairman: Yes.

Mr. Logan: I appeal from the ruling of the Chair.

The Chairman: Those who support the Chair say "aye".

[fol. 677] Mr. Dunn: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellow: No.

Mr. Tringham: No.

The Chairman: Any further nominations?

Mr. Logan: Now, Mr. Dunn, I again ask you to show proof of direction from Columbia Oil & Gasoline Corporation to support the Chair in its ruling that it will not entertain a motion to amend the By-laws.

Mr. Dunn: I don't recognize your right to make that request.

Mr. Logan: I ask the Chair to declare that the appeal was sustained, because the only one voting to sustain the Chair was Mr. Dunn, and he has shown no proof whatsoever that he has the direction of Columbia Oil & Gasoline Corporation in support of his vote, and therefore his vote cannot be accepted.

The Chairman: The Chair says that the appeal from the [fol. 678] ruling of the Chair was lost because the majority of the stockholders present voted to sustain the Chair.

Are there any further nominations?

Mr. Dunn: I move the nominations be closed.

Mr. Sperry: I second the motion.

Mr. Logan: I have a motion on the floor. I moved that the number of directors of this corporation be fixed at fourteen in view of the fact the by-laws do not fix the number. The by-laws provide for more than three, without fixing the precise number. Therefore, I move that the number of directors be fixed at fourteen.

Mr. Hand: I second the motion.

The Chairman: I rule that that motion is out of order on the ground that the Board has the right to fix the number of directors and not the stockholders.

Mr. Logan: I take an appeal again from the ruling of the Chair.

The Chairman: Those in favor of supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary!

Mr. Logan: No.

[fol. 679] Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: Again I request that the Chair reject the vote of Mr. Gano Dunn, as he has failed to show that he has been directed by Columbia Oil & Gasoline Corporation to vote in accordance with his vote.

The Chairman: Any further nominations for directors of the common stockholders?

Mr. Logan: There are. We nominate W. G. Maguire, A. Faison Dixon, Robert J. Bulkley.

Mr. Maguire: I second the nominations.

Mr. Logan: I also nominate Joseph Bodell, David Boyd-Smith, Hubert E. Howard, Goeffrey L. Mellor, and W. C. Tringham.

The Chairman: Are there any other nominations for common stockholders?

I assume, Mr. Maguire, that you second those nominations?

Mr. Maguire: Yes.

[fol. 680] Mr. Dunn: I move the nominations be closed.

Mr. Sperry: I second the motion.

The Chairman: Those in favor that the nominations be closed for directors of the common stockholders say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary, no?

The motion is carried.

Mr. Secretary, will you please distribute the ballots?

(The meeting proceeded to vote.)

The Chairman: While the Inspectors are tallying and counting the ballots may we not proceed with the Directors for the Class B preferred stock? Are there any nominations?

Mr. Dunn: I nominate Mr. Walter Mortland and Mr. Richard C. Patterson, Jr.

Mr. Logan: We object to anybody being elected by the Class B stock on the grounds that it is an invalid and illegal issue of stock contrary to the anti-trust laws and contrary to the decree of Judge Fields of January 29, 1936, in the proceedings in which Mr. Dunn was appointed Trustee.

May I have a ruling on my objection?

The Chairman: This is the same objection that has been [fol. 681] raised, the question of legality of the Class B stock, and every stockholders' meeting that I attended, and the Chair overrules the objection.

Mr. Logan: I appeal from the ruling of the Chair's refusing to entertain my motion that the Corporation should not proceed to elect two directors through this stock. I appeal to the floor.

The Chairman: You have heard the appeal to the floor from the ruling of the Chair. Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Those not supporting the Chair say "no".

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is supported.

Mr. Logan: Again I would like to point out that Mr. Dunn is the sole one supporting the Chair, and I want to ask you, Mr. Dunn, if you received directions from Columbia [fol. 682] Oil & Gasoline Corporation directing you to vote?

Mr. Dunn: I don't recognize that question.

The Chairman: That question, Mr. Logan, I think has been answered by Mr. Dunn.

Mr. Hand: I object to the vote being taken in the absence of any authority to show that Mr. Dunn does have the authority to vote the stock.

The Chairman: Will you record the objection, please? Are there any other nominations for the Class B stock?

Mr. Dunn: I move the nominations be closed.

Mr. Sperry: I second the motion.

The Chairman: All those in favor say "aye".

Mr. Dunn: Aye.

Mr. Sperry: Aye.

The Chairman: Contrary, no.

The motion is carried.

The Secretary will distribute the ballots.

Mr. Logan: Please take the negative votes, Mr. Creveling.

The Chairman: Those voting no say "no" so the Secretary can record it.

Mr. Logan: No.

[fol. 683] Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: Mr. Dunn, will you state whether or not the two people you have nominated are persons who were recommended by Columbia Oil & Gasoline Corporation?

Mr. Dunn: They are.

Mr. Logan: Will you state whether they were recommended in a conference and with your advice?

Mr. Dunn: They were.

Mr. Logan: Will you state when that conference took place and who was present?

Mr. Dunn: I don't recognize your right to ask me that question.

The Chairman: I rule that question out of order.

Mr. Logan: Will you state whether Mr. Bierwirth's name was mentioned at that conference?

Mr. Dunn: I will say I don't recognize your right to ask me that question.

Mr. Logan: Will you state whether it was your suggestion or Columbia Oil & Gasoline Corporation's suggestion [fol. 684] that Mr. Bierwirth be dropped off the Board at this time?

Mr. Dunn: Same objection.

Mr. Logan: Were you in accord with Columbia in dropping Mr. Bierwirth?

Mr. Dunn: Same objection.

Mr. Logan: You refuse to answer?

Mr. Dunn: Same objection.

Mr. Logan: Do you have any objection to Mr. Bierwirth?

Mr. Dunn: I don't recognize your right to ask me that question.

Mr. Logan: You have nominated in place of Mr. Bierwirth another man. Was he your suggestion or Columbia's?

Mr. Dunn: I have nominated two men.

Mr. Logan: Which one have you nominated in Mr. Bierwirth's place?

The Chairman: I call your attention to the fact that Mr. Bierwirth was not a director elected by the Class B stock previously.

Mr. Logan: Was he selected by the common stock last year?

The Chairman: That is correct.

[fol. 685] Mr. Logan: You elected him as one of the Columbia nominees last time, did you not?

Mr. Dunn: The records show that.

Mr. Logan: Mr. Dunn, he is the only one of the Columbia nominees elected last time who has been dropped off the Board. Will you state in this conference you had with Columbia at whose suggestion it was that he be dropped off the Board?

Mr. Dunn: I don't recognize your right to ask me that question.

Mr. Logan: As a matter of fact, it was your recommendation, was it not?

Mr. Dunn: I don't recognize your right to imply that.

The Chairman: As I understand, Mr. Logan, trying to get on with this and not trying to defeat anything you may have in mind, Mr. Dunn has stated that his nominees were chosen from more than the number of names he has nominated.

Is that a correct statement, Mr. Dunn?

Mr. Dunn: That is correct.

The Chairman: Will you pass the ballots on behalf of the B stock?

[fol. 686] Mr. Logan: Mr. Creveling, may I offer as a part of the record of this meeting a copy of the decree which sets up the Trust under which Mr. Dunn is acting?

The Chairman: File that as part of the records of this stockholders' meeting, please.

Mr. Logan: If any of the rulings or any of the votes that you made heretofore were made either with the thought or belief that the Trust did not state provisions I previously quoted, or if any of the rulings or any of the votes were made without knowledge of the terms of the Trust, I would like to have the person who made the ruling or the person who cast the vote so state at this time, because otherwise if neither Mr. Creveling, who has made the rulings, or Mr. Dunn, who has done all the voting, and counsel who have advised Mr. Creveling and Mr. Dunn, intend in the future to take the position that the terms of the Trust are not before the meeting, or were not known to the meeting, they should so state now or forever hold their peace.

Mr. Steel: You read them into the record two or three times, haven't you?

The Chairman: Will the Inspectors report on the common stock directors?

[fol. 687] Panhandle Eastern Pipe Line Company

Second Report of Judges

Dover, Delaware

March 11, 1940

We, the undersigned, duly appointed Judges at the Annual Meeting of Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, held at the principal office of the Company, No. 19-21 Dover Green, Dover, Delaware, on March 11, 1940, at 2:00 o'clock P. M., and at all adjournments thereof,

Do Report

that, we having taken an oath faithfully and impartially to execute the duties of Judges at said meeting, and having received and counted the votes cast for Directors to represent the Common Stock of said Company, that the votes cast thereat by ballot for such Directors, each to serve for one year or until his successor is elected and shall qualify, were as follows:

Director.	Votes Received
Gano Dunn	712,951
Joe D. Creveling	713,714
Joseph A. Bower	712,950
Robert C. Winmill	712,950
William G. Maguire	805,380
W. C. Tringham	1,421
[fol. 688] A. Faison Dixon	805,380
Robert J. Bulkley	805,380
Joseph Bodell	50,000
David Boyd Smith	50,000
Herbert E. Howard	50,000
Geoffrey R. Meller	63,779

In Witness Whereof, we have hereunto affixed our respective signatures, this 11th day of March, 1940.

Respectfully submitted, Thomas M. Keith, Leonard G. Hagner, Judges.

The Chairman: Of the twelve directors nominated, the following seven have been duly elected:

Gano Dunn, Joe D. Creveling, Joseph A. Bower, Robert C. Winmill, William G. Maguire, A. Faison Dixon and Robert L. Bulkley.

Mr. Logan: Mr. Creveling, I object to your statement that only the seven receiving the highest number of votes were elected, and request that you declare that all twelve for whom votes were cast were elected directors, as twelve [fol. 689] is the number to be elected at this meeting by the common stock, not seven as you have stated.

The Chairman: You request that?

Mr. Logan: Yes.

The Chairman: I refuse the request.

Mr. Logan: I appeal to the floor from the ruling refusing to name as directors Messrs. Bodell, David Boyd-Smith, Howard, Mellor, and Tringham, and ask that the matter be referred to the floor.

The Chairman: You have heard the appeal from the ruling of the Chair. Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: Have you the report on the Class B Preferred stock?

Mr. Keith: I can report with regard to the report by the Inspectors of Election for the Class B stock that there [fol. 690] were 10,000 votes cast for Walter G. Mortland and 10,000 votes for Richard C. Patterson, Jr.

Mr. Logan: I object to the Chair's receiving the report for the reasons I stated heretofore.

The Chairman: I declare Walter G. Mortland and Richard C. Patterson, Jr. elected by the Class B Preferred stock as directors of the Corporation.

Mr. Logan: I appeal to the floor from the ruling of the Chair turning down my objection to the receipt of this report.

The Chairman: You have heard the appeal from the ruling of the Chair. Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary, no.

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is sustained.

The next order of business, gentlemen, is that I would [fol. 691] like to have a resolution, if it is agreeable, to hold the organization meeting of the new Board on March 13, 1940, at three-thirty o'clock.

Mr. Logan: I would like to make a motion. You are now proceeding to new business.

I move that By-law 22 be stricken and that there be substituted in lieu thereof the following:

The officers of the corporation shall be chosen by the stockholders and shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, and shall hold their respective offices for the term of one year and until their successors are duly elected and have qualified. Any two offices may be held, and the duties performed, by one and the same person, except that the offices of President and Secretary must at all times be held and filled by two different persons.

I move that Article 24 of the By-laws be stricken and there be substituted in lieu thereof the following:

The salaries of all officers of the corporation shall be fixed by the stockholders. The officers of the corporation shall hold office until their successors are chosen and qualified in their stead. No officer or agent elected by [fol. 692] the stockholders may be removed except for cause.

And I move that Article 42 of the By-laws be stricken.

Mr. Hand: I second the motion.

The Chairman: The motion is out of order. That is the ruling of the Chair because the provisions of Article 42 providing the way in which amendments shall be made has not been complied with.

Mr. Logan: I call the Chair's attention to Section 12 of the Delaware Corporation Laws, which authorizes and allows the amendment which I just proposed, and ask that the Chair reverse its ruling.

The Chairman: The ruling still stands.

Mr. Logan: I appeal from the two rulings, the original ruling and the refusal to modify the ruling.

The Chairman: You have heard the rulings of the Chair. Those in support of the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary, no.

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

[fol. 693] Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: Mr. Dunn, may I again ask whether you have direction from the Columbia Oil & Gasoline Corporation to vote as you just voted?

Mr. Dunn: I don't recognize your right to ask me that question.

Mr. Logan: I assume, then, you did not have any such direction?

Mr. Dunn: I don't recognize the validity of your assumption.

Mr. Logan: My assumption is true, is it not, Mr. Dunn?

Mr. Dunn: I don't recognize your implication.

Mr. Logan: My assumption is still true.

The Chairman: I think you have gone far enough.

Mr. Logan: I now move that the following officers be elected to serve until the next Annual Meeting of Stockholders and until their successors are duly chosen, at salaries to be the same as similar officers are now receiving:

President, W. G. Maguire; Vice-President, Girard J. Neuner; Secretary Leith V. Watkins; Treasurer, W. C. [fol. 694] Tringham.

Mr. Hand: I second the motion.

The Chairman: I rule that the motion is out of order in accordance with Section 22 of the By-laws, which provides for the method of electing officers of the Corporation.

Mr. Logan: In view of the fact that we just amended the By-laws and in view of the fact further that the stockholders have vested within them the power to elect officers, I ask that the Chair reverse its ruling.

The Chairman: The ruling stands.

Mr. Logan: I appeal from the ruling and refusal to reverse the ruling.

The Chairman: Those in favor of supporting the Chair in both rulings say "aye".

Mr. Dunn: Aye.

The Chairman: Those opposed say no.

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: Again, Mr. Dunn, may I ask you if you [fol. 695] were directed by Columbia Oil & Gasoline Corporation to vote as you just voted?

Mr. Dunn: The same answer as before.

Mr. Logan: The same result if I pursue the subject, I suppose, Mr. Dunn?

Mr. Dunn: The same result.

Mr. Hand: Mr. Chairman, I make the following motion:

Whereas by letter dated January 15, 1940 to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas, this corporation, its officers and directors have failed and neglected to comply therewith in any respects; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, Therefore, be it resolved that this corporation [fol. 696] take the actions set forth and described in paragraphs 1 to 6 inclusive of said letter of January 15, 1940; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Maguire: I second the motion.

Mr. Logan: Question.

Mr. Hand: I ask that those preambles and resolutions be adopted by this meeting.

The Chairman: You have heard the motion that has been read and seconded. Are there any comments?

Mr. Logan: Question. I would say this, Mr. Creveling: I don't think it is necessary to have an extended debate on them. Everyone here who is qualified to vote is familiar with the matters and facts set forth in the motion, and [fol. 697] there can't be any need of discussion at this time. Everyone is fully familiar with it all.

The Chairman: Those in favor of the resolution as read by Mr. Hand and seconded by Mr. Maguire say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

The Chairman: Contrary, no.

Mr. Dunn: No.

The Chairman: The motion is lost.

Mr. Logan: Mr. Dunn, may I ask if you were directed by Columbia Oil & Gasoline Corporation to vote against that resolution?

Mr. Dunn: I don't recognize your right to ask the question.

Mr. Hand: May I have noted on the record that I object to the vote of Mr. Dunn unless in compliance with his Trust and evidence of compliance with his Trust be shown here. By that I mean, some evidence to show us that he is acting [fol. 698] in accordance with the wishes of his principal when he votes as he does on this question.

Mr. Logan: I must point out at this time that this motion is one for this corporation to bring law suits against Columbia Oil & Gasoline Corporation. Mr. Dunn has no right to vote on that motion unless he is directed by Columbia Oil & Gasoline Corporation. If he is voting because he was directed by Columbia Oil & Gasoline Corporation to vote against it, this corporation should not receive his vote. If he was not, he has no right to vote, and I demand that the Chair reject his vote and declare the resolutions adopted.

The Chairman: The Chair declares that the resolution was lost.

Mr. Logan: I take an appeal from the ruling of the Chair.

The Chairman: Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary, no.

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

[fol. 699] Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is supported.

Mr. Hand: Mr. Chairman, I have another motion and preamble.

Whereas an action was filed this day in the United States District Court for the District of Delaware by Missouri-Kansas Pipe Line Company and Lucille Dammann, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Michigan Gas Transmission Corporation, Gano Dunn and this corporation, asserting in part derivative claims of this corporation against the said other defendants; and

Whereas said complaint asserts in part some of the causes of action which Missouri-Kansas Pipe Line Company demanded this corporation take in and by its letter of January 15, 1940, which is part of the minutes of this corporation of January 17, 1940;

Now, Therefore, Be It Resolved, that this corporation appear in said proceeding by counsel and ask leave to be made a party plaintiff to assert its rights and prosecute the [fol. 700] same; and

Be It Further Resolved that this corporation prosecute its rights in such action with all due diligence; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to take action provided for herein; and

Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Maguire: I second the motion.

The Chairman: I think in view of the fact that the Bill of Complaint was filed today it might be a little premature,

I don't know; but the motion has been made and seconded.
Are there any further comments?

Those in favor of the motion say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

[fol. 701] Mr. Tringham: Aye.

The Chairman: Contrary, no.

Mr. Dunn: No.

The Chairman: The motion is lost.

Mr. Logan: May I point out to the Chair that Mr. Dunn is one of the defendants in the law suit we are now talking about and which the motion contemplates and which would have this Corporation assert its rights which are antagonistic to those of Mr. Dunn. Mr. Dunn in his personal capacity has no right to vote against the motion, and if he is voting against the motion through the direction from Columbia Oil & Gasoline Corporation, also defendants, he again has no right to vote. If he is voting without the direction of Columbia Oil & Gasoline Corporation, it is a third reason he has no right to vote, and I demand that the Chair refuse to accept his vote and declare the resolution passed.

The Chairman: The resolution is lost.

Mr. Logan: I appeal from that ruling.

The Chairman: You have heard the appeal. Those in support of the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

[fol. 702] Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: I declare the Chair sustained.

Mr. Hand: I ask the adoption of the following resolution:

Be It Resolved that the Board of Directors of this corporation be and hereby are instructed to forthwith redeem the outstanding Class A \$6.00 Participating Preferred Stock of this Company, and for that purpose to use such portion of the cash surplus of the corporation as they deem advisable, the balance to be raised by the Company through

the sale of bonds, debentures, through bank loans or otherwise.

Mr. Maguire: I second the motion.

The Chairman: You have heard the Resolution and its second. Are there any comments on that?

Mr. Logan: I may say this: The Board of this corporation has recognized in the past the advisability of redeeming its Class A Preferred stock, as is reflected in the [fol. 703] minutes of the Board, where the Board proposed that it be redeemed, but by the issuance of a new class of preferred stock. This action of the Board was blocked by Mr. Gano Dunn following the directions of Columbia Oil & Gasoline Corporation. This proposal is that the stockholders instruct the Board to proceed to redeem the stock as the Board has indicated is desirable and advisable from a corporate standpoint in a means and method whereby neither Mr. Dunn nor Columbia Oil & Gasoline Corporation can block the redemption, because it calls for the redemption through cash surplus or through funds to be raised by the directors, and it does not call for an amendment to the certificate which would give Mr. Dunn a right to veto any proposal and defeat the proposal. This can be done by Directors entirely separate from any vote of Mr. Dunn's except in his capacity as one member of the Board of Directors, and can be done separately from any influence of Columbia Oil & Gasoline Corporation if the Directors will act without that influence.

That should be pointed out before this vote is taken. Mr. Dunn should have that fact pointed out to him before he votes, because we again will assume that if he votes against this he is doing so under the direction of Columbia Oil & Gasoline Corporation, whereas we take the position that [fol. 704] if he is voting the stock standing in his name in a free and independent way, he will not vote against this resolution; whereas if he is voting under the control and domination of Columbia Oil & Gasoline Corporation at all times, he will naturally vote against this resolution.

The Chairman: Are there any other comments on the Resolution?

Do you have in mind the Resolution now? It is as follows:

Be It Resolved that the Board of Directors of this corporation be and hereby are instructed to forthwith redeem the outstanding Class A \$6.00 Participating Preferred

Stock of this Company, and for that purpose to use such portion of the cash surplus of the corporation as they deem advisable, the balance to be raised by the Company through the sale of bonds, debentures, through bank loans or otherwise.

Mr. Logan: I would like the record to show that a written copy of that resolution was handed to Mr. Dunn at the time it was proposed, as was done in connection with the prior resolutions. He was given written copies so there could be no question or doubt as to whether or not he understood the full purport thereof.

[fol. 705] The Chairman: Any further comments?

Those in favor say "aye."

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

The Chairman: Contrary, no.

Mr. Dunn: No.

The Chairman: The Resolution is lost.

Mr. Logan: I ask that the Chair reject the vote of Mr. Dunn for the reasons I stated previously. This corporation is not bound to accept a vote which is either dominated and controlled by Columbia or which is obviously for the benefit of Columbia Oil & Gasoline Corporation.

The Chairman: Objection overruled.

Mr. Logan: I appeal from both the original ruling and the ruling on the request.

The Chairman: Those in support of the Chair for both, say "aye."

Mr. Dunn: Aye.

The Chairman: Contrary, no.

[fol. 706] Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Mellor: Mr. Creveling, isn't it a fact that quite recently the Board of Directors of this Company did authorize the recalling of this preferred stock and its retirement and replacement by another issue?

The Chairman: You will have to ask the Secretary for the record on that.

The Secretary: Not that I recall.

The Chairman: The records will show.

Mr. Maguire: The Board voted it advisable to do so.

The Chairman: That is correct. If you change it to that, Mr. Mellor—

Mr. Mellor: I will.

The Chairman: The Board did vote that it was advisable to do so.

Mr. Maguire: And they asked the stockholders at that [fol. 707] time, and we said "yes," we would.

The Chairman: If I recall, specifically, I thought that was the action of the Board.

Mr. Maguire: And Mr. Dunn asked to be recorded as not voting.

Mr. Mellor: Could I ask Mr. Dunn another question? I should like to ask whether or not during the year nineteen thirty-seven it did not come to his knowledge that negotiations were proceeding through the medium of certain banking houses in New York to underwrite the common stock now held by Columbia Oil & Gasoline Corporation, and that when that knowledge came to his attention he discussed the matter with the Columbia interests and advised them himself that it was not in the interests of this corporation, that is, the Panhandle Eastern, to accept a bid which the banks intended to offer, and that as a result of Mr. Gano Dunn's personal recommendation to the Columbia interests, the Columbia interests wrote to the bankers concerned and asked them to withdraw any further negotiations.

The Chairman: You are asking that question of Mr. Dunn?

Mr. Dunn: I would like to have the question read again, [fol. 708] because it is so long and has so many branches to it I can't carry it all in my mind.

Mr. Mellor: I am asking you whether some time in nineteen thirty-seven it was not brought to your attention that certain leading bankers in New York were prepared to purchase or to underwrite the common stock now held by Columbia Oil & Gasoline Corporation in this Company, and that on your being acquainted with the fact that they were prepared to underwrite the stock you did not go to the Columbia interests and tell them of your own initiative

that it was not to the interests of the Panhandle Eastern Corporation to have that stock distributed by private bankers, and that as a result of your conversations Columbia wrote to the bankers and asked them to withdraw from further negotiations?

Mr. Dunn: Mr. Mellor, your question is so long that I cannot answer it. If you will break it up I will try to answer it.

Mr. Mellor: I will break it up.

Mr. Dunn: If you will write me a letter and put it in writing, I will try to answer it.

Mr. Mellor: Were you informed during nineteen thirty-[fol. 709] seven that certain banking interests in New York were prepared to underwrite the common stock of Panhandle Eastern now owned by Columbia Oil & Gasoline Corporation?

Mr. Dunn: No, I was not.

Mr. Mellor: At no time during nineteen thirty-seven?

Mr. Dunn: At no time during nineteen thirty-seven nor any other time.

Mr. Mellor: Nor any other time? Thank you.

The Chairman: One of the other specific purposes for which this meeting has been called was to consider and act upon a certain amendment to the Certificate of Incorporation of the Company whereby the seventh paragraph of sub-division 1 of Section B of Article Fourth will be amended so that it will be possible to declare or pay participating dividends during any year if during such year any additional shares of common stock were issued, and that such amendments had been declared advisable by the Board of Directors of this Company at its meeting held February 27, 1940.

The proposal on which the stockholders will be asked to vote is this:

"Resolved that the seventh paragraph of Subdivision 1 of Section B of Article Fourth of the Certificate of In-[fol. 710] corporation, as heretofore amended, reading as follows:

"After the requirements in respect of the preferential dividends upon the Preferred Stock of both classes, as hereinbefore set forth, to the end of the then current quarterly dividend period for said stock shall have been met, and after the provisions of the immediately preceding

paragraph shall have been complied with, and not otherwise, the holders of the Common Stock shall be entitled to receive, out of the remaining net profits or net assets of the corporation applicable to dividends, dividends at a rate not to exceed One Dollar and Fifty Cents (\$1.50) per share per annum, before any participating dividends shall be declared or paid upon or set apart for the Class A Preferred Stock and the Common Stock as hereinafter provided."

This shall be further amended to read as follows:

"After the requirements in respect of the preferential dividends upon the Preferred Stock of both classes, as hereinbefore set forth, to the end of the then current quarterly dividend period for said stock shall have been met, and after the provisions of the immediately preceding paragraph [fol. 711] shall have been complied with, and not otherwise, the holders of the Common Stock shall be entitled to receive, out of the remaining net profits or net assets of the corporation applicable to dividends, dividends at a rate not to exceed One Dollar and Fifty Cents (\$1.50) per share per annum, before any participating dividends shall be declared or paid upon or set apart for the Class A Preferred Stock and the Common Stock as hereinafter provided. In the event of the issue of additional Common Stock during any year all such dividends paid on the Common Stock in such year prior to the issue of such additional Common Stock and all such dividends declared and payable to holders of record of Common Stock on a date in such year prior to such additional issue, shall be deemed to have been paid on the additional Common Stock so issued."

That is a long resolution. Is there anyone here that does not know the intent of the Resolution?

Mr. Logan: Mr. President, I think I understand the intent of the Resolution, although I am not sure, and in order to clarify my own mind I would like to ask you several questions [fol. 712]. First, who proposed that Resolution to the Board?

The Chairman: What do the records show on that?

The Secretary: The records of the Board, I believe, show that the proposal was made on the basis of advice received from counsel.

Mr. Logan: From what counsel?

The Secretary: Company counsel, general counsel for the Company, Mr. Edward M. Goodwin.

Mr. Logan: Mr. Goodwin is present.

Mr. Goodwin, was that resolution made pursuant to your recommendation?

Mr. Goodwin: Well, my advice was asked as to whether under the circumstances—late last year—participating dividend could safely be paid in view of the fact that only fifty cents a share had been paid on the 80,000 shares outstanding, and I advised that there was a legal doubt about it and that the appropriate remedy for the situation would be an amendment to the Certificate of Incorporation, and I advised the Directors that until that was done they should not declare any participating dividends. I gave no advice as to whether they should do it or not.

Mr. Logan: You mean last year when the situation arose [fol. 713] you gave your opinion then?

Mr. Goodwin: That is right.

Mr. Logan: That they should not pay the participating feature at that time?

Mr. Goodwin: Yes.

Mr. Logan: Now, Mr. Goodwin, the proposal has been to amend the Certificate—

Mr. Goodwin: I had nothing to do with that. I have been abroad ever since the early part of January.

Mr. Logan: Now, Mr. Watkins, Mr. Goodwin was not the responsible one, so could you tell us who was?

The Secretary: Shall I quote you from the minutes?

Mr. Logan: Yes.

The Secretary: Quoting from the minutes of a special Directors' Meeting of Panhandle Eastern Pipe Line Company held at 3 o'clock, P. M., on Tuesday, February 27, 1940, under the caption "Amendment of the Certificate of Incorporation" there appears the following:

"The Chairman stated that he had been advised by this company's general counsel that under the provisions of the company's existing Certificate of Incorporation it was impossible to declare or pay participating dividends during any year if during such year any additional shares of common stock were issued, and that in order to cure this situation and in the best interests of the company it would be necessary to amend the Certificate of Incorporation of this company. He submitted to the meeting a pro-

posed form of amendment of the Certificate of Incorporation of the company to carry into effect the proposed amendment, a copy of which is included in the minutes."

Mr. Logan: Mr. Chairman, apparently you presented a proposed amendment, and Mr. Goodwin tells us he did not prepare it. Will you please tell us who prepared it?

The Secretary: I prepared the proposed amendment.

Mr. Logan: Did you consult with counsel in doing so?

The Secretary: Yes, indeed.

Mr. Logan: What counsel did you consult?

Mr. Goodwin: He consulted with my office, during my absence.

Mr. Logan: Whom did you consult with?

The Secretary: Mr. William L. Glen, associate of Mr. Goodwin.

Mr. Logan: Did you consult with anyone else?

The Secretary: Any other attorney?

Mr. Logan: Yes.

The Secretary: Not that I recall.

[fol. 715] Mr. Logan: Will you think clearer and tell us whether you did?

The Secretary: I don't recall any other.

Mr. Logan: Did you talk to Mr. Dunn about it?

The Secretary: Not at all.

Mr. Logan: Never discussed it with him at all?

The Secretary: I don't recall any conversation with Mr. Dunn with respect to the form of amendment of this Certificate of Incorporation.

Mr. Logan: I am talking about the fact of having the amendment. Whose suggestion was that?

The Secretary: The President of the Corporation instructed me to prepare it.

Mr. Logan: Now we get back to you, Mr. Creveling. Who was the one that suggested to you that you proceed with the amendment.

The Chairman: As I recall, no one did. I presented this matter to the Board for its determination as to whether or not they wanted to remedy this thing which had been discovered in December, as I recall, without recommendation, but simply in order to allow the Board to express its views on it.

Mr. Logan: You presented it in this printed form, did [fol. 716] you not?

The Chairman: He just read it to you from the minutes.

Mr. Logan: I mean, the definitive form it is in?

The Chairman: That is right.

Mr. Logan: Before that day, then, you did consider it and you asked Mr. Watkins to go out and have a proposed amendment prepared?

The Chairman: That is correct.

Mr. Logan: Whom did you talk to and whom did you consult with as to the advisability of doing that?

The Chairman: No one.

Mr. Logan: This all comes out of your own brain?

The Chairman: Don't give me credit with having too much brains. I did this following the December opinion of our counsel in order to permit the Board of Directors to express its views on it.

Mr. Maguire: Mr. Creveling, may I just refresh your recollection? In the past few months there has been a financial committee, of which I was a member. We consulted bankers and they made up a proposition. The last meeting that I recollect I attended with the Finance Committee was on January 18. Certain assurances were given [fol. 717] me, among them being that this section would be as is and there would be no change. Then we get down to about a week ago—

Mr. Dunn: You mean that there would be no amendment to the Certificate of Incorporation?

Mr. Maguire: That is correct.

The Chairman: Who made that statement to you?

Mr. Maguire: You or Mr. Sperry.

The Chairman: I deny that.

Mr. Maguire: Let me carry on. It is possible I may have misunderstood you. It was also told us at the time, just to refresh your recollection a little more, that the surplus in the new indenture would be practically the same as in the old one, except as of January 1, 1936, I think.

The Chairman: December 31, 1936.

Mr. Maguire: I was away and I got back and found out that both of those items had been changed. I asked the bankers who insisted on it, and they said, "Well, you go ask your friend Creveling."

So then we did have a Finance Committee meeting, which I attended, which was about a week or ten days ago. Isn't that correct?

The Chairman: I don't recall when it was.

[fol. 718] Mr. Maguire: And it was specifically stated in that meeting—I have a memorandum made of it at the time—that this change was made because Columbia demanded it. Do you recollect that?

The Chairman: Would you like to have me make a statement on this, Mr. Maguire?

Mr. Maguire: Yes, I wish you would.

The Chairman: When we were working on the conditions to go in a mortgage for some new financing, various terms were discussed. The matter was taken up at a Board meeting and it was stated that the indenture as being drawn by the management with the bankers, amongst other things, placed the date of freezing the reserves at the—freezing the surplus at the same point that was in the indenture under which we are now operating.

Mr. Maguire: That is right.

The Chairman: That was in the original draft of our mortgage, and that fact had to be approved by the majority of the stockholders before it could become a final term. That was presented to Mr. Dunn, and Mr. Dunn—or indirectly Mr. Dunn, because he immediately after this made a trip to Haiti, and Mr. Sperry and Mr. Glen of Mr. Goodwin's office pursued the matter in his absence and received [fol. 719] the reply to the effect that that term of the indenture would not be approved by the majority stockholder.

Mr. Logan: You are talking about Columbia Oil, are you not, at this time?

Mr. Sperry: Pardon me, I don't think that is relevant to this discussion at all. This is an entirely different question.

The Chairman: We might as well get this clear.

Mr. Logan: But when you were talking about Mr. Sperry and Mr. Glen receiving word that the majority stockholder would not vote for it, you meant Columbia Oil?

Mr. Dunn: This is an amendment to the Certificate of Incorporation. This is a different thing.

Mr. Logan: Please answer that question. You meant the Columbia Oil?

The Chairman: That is correct.

Mr. Logan: And when you talk about the majority stockholder you mean the Columbia Oil?

The Chairman: I mean Gano Dunn, as the stockholder of record.

Mr. Logan: When Gano Dunn was in Haiti who told you [fol. 720] what you just stated was told?

The Chairman: You will have to ask Mr. Sperry about that. He is here.

Mr. Logan: Who is the one that said that, Mr. Sperry? With whom did you consult about it?

Mr. Sperry: Mr. Glen and I consulted with Mr. Wilson. He was Vice-President of the Columbia Oil & Gasoline Corporation, and Mr. Alley, who was Vice-President of the Columbia Oil & Gasoline Corporation.

Mr. Logan: We finally got Columbia Oil & Gasoline Corporation's name out.

Mr. Maguire: Of course, we do own a little stock in this outfit and represent about 1200 other stockholders, as evidenced by this today. We didn't know of this change in the indenture until Arthur Dean told me about it the day I was asked to vote on it. Do you recall that? I asked him the categorical question, "Did Columbia insist on it?"

He said, "They did."

The bankers would not tell me who insisted on it.

Mr. Sperry: I suggest you put the question. I think this discussion is not pertinent to the matter we have under discussion.

[fol. 721] Mr. Logan: No, this discussion got away. Let us get back to what I was talking about, which is this specific change in the Certificate of Incorporation and concerned with this participating preferred stock. We had gotten to the point, Mr. Creveling, where you had appeared at a Board meeting with the definitive proposed amendment.

The Chairman: That is correct.

Mr. Logan: And we had gotten to the point that previously to that you had asked Mr. Watkins to have it prepared, and he had it prepared in Mr. Goodwin's office. What I was pursuing at the time was whether or not you ever talked with any Columbia representatives.

The Chairman: The answer very definitely is no.

Mr. Logan: Did Mr. Dunn ever state to you that this amendment should be made?

The Chairman: No.

Mr. Logan: Did you ever discuss this with Mr. Dunn?

The Chairman: I don't recall that I did, Mr. Logan. I can answer your question this way: If I did, any suggestion that he made had no bearing on my asking Mr. Watkins

to prepare the amendment to be considered by the Board of Directors, which was presented to them by me without recommendation.

[fol. 722] Mr. Logan: Do you realize and did you at the time you presented to the Board this amendment that this amendment could be of material aid and benefit to no one except Columbia Oil & Gasoline Corporation?

The Chairman: I didn't give any consideration to it.

Mr. Goodwin: That is not quite so, Mr. Logan, because it prevents the declaration, as it did, last December. It just could not declare a participating dividend, which it was then thinking about, and in which the common stock would have participated.

Mr. Logan: It can declare a dividend, although Columbia would not have participated.

Mr. Hand: Who would you say sponsored this resolution of the Board of Directors?

The Chairman: It was passed by the Board of Directors by a majority vote.

Mr. Hand: Who would you say sponsored it? Who spoke up for it?

The Chairman: I don't recall that. The records should show who made the motion and who voted for it.

Mr. Maguire: The records should show, but they don't.

Mr. Logan: Do the records show, Mr. Watkins?

[fol. 723] The Secretary: No. We customarily do not show who made the motions or who seconded them. I will take full responsibility as Secretary of the Corporation for preparing the Certificate of Incorporation amendment in definitive form. Nobody instructed the Secretary to prepare it in such form, and the only purpose in preparing it in such form was that it was my idea that the amendment should go to the Board in final form and if passed it would be presented in final form to the stockholders.

Mr. Maguire: Have you the record here as to who the proposer was and who the seconder was?

The Secretary: All I have is the minutes that were there.

Mr. Maguire: You haven't your papers?

The Secretary: After the minutes are approved, they are destroyed.

Mr. Maguire: It was proposed by Mr. Dunn and seconded by Mr. Winnill.

Mr. Logan: Mr. Dunn, did you propose this amendment?

Mr. Dunn: I had nothing to do with the preparation of it, but because I move most of the motions at the Directors' meetings, I think, although I am not sure, I was the [fol. 724] one who moved this in the ordinary order of business.

Mr. Logan: And did you discuss it with Columbia before you moved it?

Mr. Dunn: No.

Mr. Logan: Did you have direction from Columbia with respect to it at the time you voted?

Do you refuse to answer that question?

Mr. Dunn: Pardon me, I am thinking.

Mr. Logan: Pardon me. The time was rather long, the period of time which elapsed seemed long. That is my second question.

(The Reporter read Mr. Logan's question as follows:)

"Mr. Logan: Did you have directions from Columbia with respect to it at the time you voted?"

Mr. Dunn: No, I did not.

Mr. Hand: Let me clear up something: Mr. Watkins, you stated that the resolution as it now is here was prepared by you in final form before it was submitted to the Board?

The Secretary: Not the resolution.

Mr. Hand: I mean the amendment.

The Secretary: Yes.

Mr. Hand: I take it from what you said before in preparing that amendment you did so acting under instructions [fol. 725] from somebody?

The Secretary: The record shows that here. I stated that.

Mr. Hand: I just wanted to be sure.

The Chairman: Yes. So there will be no misunderstanding I instructed the Secretary to be in a position to put the thing up to the Board for consideration at the next meeting, and this is what resulted.

Mr. Logan: Mr. Creveling, I handed you a letter earlier in the day concerning this matter. Will you make it a part of the minutes?

The Chairman: Yes.

Mr. Logan: To show that Missouri-Kansas Pipe Line Company objected to the amendment.

The Chairman: Yes.

Mr. Logan: I will give Mr. Dunn a copy.

(The letter presented by Mr. Logan was made a part of the minutes and is as follows:)

March 11, 1940.

Panhandle Eastern Pipe Line Co.
Dover, Delaware.

GENTLEMEN:

As you know the Board of Directors of Panhandle Eastern Pipe Line Company have proposed that the certificate of incorporation of Panhandle Eastern Pipe Line Company be amended by a vote of stockholders at the annual meeting to be held today. This proposed amendment would change the terms and provisions of the outstanding Class "A" \$6 participating preferred stock. As counsel for Missouri-Kansas Pipe Line Company, may I point out to you that the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company voted against the proposed amendment and that at the annual meeting Missouri-Kansas Pipe Line Company will vote its shares of the common stock of Panhandle Eastern Pipe Line Company against the proposed amendment.

May I point out that the terms and provisions of this Class "A" \$6 participating preferred stock were fixed by contract viz., the contract of June 1, 1936, between yourself, Columbia Gas and Electric Corporation, Columbia Oil & Gasoline Corporation and the receivers of Missouri-Kansas Pipe Line Company acting on its behalf. If a vote is received in favor of the amendment, and thus the terms and provisions of said Class "A" \$6 participating preferred stock are changed from those set forth in the contract of June 1, 1936, Missouri-Kansas Pipe Line Company will consider that you have repudiated and breached said [fol. 727] contract of June 1, 1936. We demand that no such vote be received.

Yours truly,

(Signed) Arthur G. Logan."

The Chairman: We will proceed now with the ballots to those desiring to vote on this proposed amendment.

I think we can make a little headway on this amendment if I will ask how the proxies held by Mr. Watkins and Mr. Sperry will be voted on the amendment.

Mr. Sperry: They are going to be voted for the adoption of the amendment.

Mr. Watkins: That is because of the peculiar wording of the notice and because the proxies feel that they must vote for it.

The Chairman: Are you going to vote on it, Mr. Dunn?

Mr. Dunn: No, I am not going to vote on it.

The Chairman: Mr. Maguire and the others here, how are you going to vote your proxies?

Mr. Dixon: I vote no.

Mr. Maguire: No.

[fol. 728] The Chairman: May the Chair then rule that the amendment has been lost and let the judges of election tally these in exact form.

Mr. Logan: I don't think you need that; just vote it down.

The Chairman: All right, it is voted down.

Mr. Dunn: I don't think it is voted down; it failed to pass.

The Chairman: It failed to pass.

Mr. Logan: Why isn't it voted down?

Mr. Dunn: I didn't vote on it.

The Chairman: The amendment as proposed is lost.

Mr. Maguire: Let us put in how it was done.

The Chairman: That will be in the record.

Mr. Logan: Mr. Dunn, I notice that for the first time this evening or rather the first time at this meeting you failed to vote. Were you instructed by Columbia Oil & Gasoline Corporation not to vote on this proposal?

Mr. Dunn: The same answer as to all your previous questions.

Mr. Logan: Then again we assume that your instructions from Columbia carried this time to the point of not [fol. 729] voting?

Mr. Dunn: The same answer.

Mr. Logan: You are aware, are you not, that we wrote to Columbia and demanded that they should not vote in favor of this amendment?

Mr. Dunn: You sent me a copy of the letter.

Mr. Logan: I sent you a copy of the letter which I wrote to Columbia, did I not?

Mr. Dunn: Yes.

Mr. Logan: I hand you what purports to be a copy of it, and will you state if that is a copy of the letter I sent you?

Mr. Dunn: I cannot state that. This is all marked up.

Mr. Logan: I mean without the markings.

Mr. Dunn: I don't even know that.

Mr. Logan: You received a copy of the letter I wrote Columbia Gas & Oil Corporation on March 8?

Mr. Dunn: Yes.

Mr. Logan: If I state this is a copy of it, will you accept that statement?

Mr. Dunn: I believe you.

[fol. 730] Mr. Logan: I would like to put this in as part of the record with this understanding: That all pencil marks come off.

The Chairman: Filed.

March 8, 1940.

Columbia Oil and Gasoline Corporation
Delaware Trust Building
Wilmington, Delaware

GENTLEMEN:

As you know the Board of Directors of Panhandle Eastern Pipe Line Company have proposed that the certificate of incorporation of Panhandle Eastern Pipe Line Company be amended by a vote of stockholders at the forthcoming annual meeting. This proposed amendment would change the terms and provisions of the outstanding Class "A" \$6 participating preferred stock. As counsel for Missouri-Kansas Pipe Line Company, may I point out to you that the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company voted against the proposed amendment and that at the annual meeting Missouri-Kansas Pipe Line Company will vote its shares of the common stock of Panhandle Eastern Pipe Line Company against the proposed amendment. [fol. 731] This means that the amendment can only be passed, through the vote of the preferred and common stock standing in the name of Mr. Gano Dunn, but beneficially owned by you. By the provisions of Paragraph 111 (b) of the consent decree entered on January 29, 1936, Mr. Dunn can only vote said stock on this proposed amendment as directed by you.

May I inquire on behalf of Missouri-Kansas Pipe Line Company whether or not you have directed, or intend to direct, Mr. Gano Dunn to vote said stock in favor of the

amendment. If so, may I point out that the terms and provisions of this Class "A" \$6 participating preferred stock were fixed by contract viz., the contract of June 1, 1936, between yourself, Columbia Gas and Electric Corporation and the receivers of Missouri-Kansas Pipe Line Company acting on its behalf. If the stock held by Mr. Gano Dunn is voted in favor of the amendment, and thus the terms and provisions of said Class "A" \$6 participating preferred stock are changed from those set forth in the contract of June 1, 1936, Missouri-Kansas Pipe Line Company will consider that you have repudiated and breached said contract of June 1, 1936.

Yours truly,

AGL:KR

[fol. 732] Mr. Logan: After I wrote that letter and sent you a copy did you discuss it with Columbia Oil, Mr. Dunn?

Mr. Dunn: I don't recognize your right to cross-examine me on those conferences with Columbia Oil.

Mr. Logan: Then you did have a conference on this letter?

Mr. Dunn: I don't recognize your right to ask me that question.

The Chairman: I think you will not get anything, Mr. Logan, by pursuing that.

Mr. Logan: I found that Mr. Creveling. I won't get anything at this meeting.

The Chairman: Anything else to come before the meeting?

Mr. Dunn: I move we adjourn.

Mr. Sperry: I second the motion.

The Chairman: All in favor say "aye".

Mr. Dunn: Aye.

Mr. Sperry: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

[fol. 733] Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The motion is carried. The meeting is adjourned.

Mr. Logan: Will the Reporter please record that Mr. Gano Dunn made a motion to adjourn, which was seconded by Mr. Sperry, and which when put to a vote was voted for only by Mr. Dunn and Mr. Sperry, while the following voted against it: Mr. Logan, Mr. Maguire, Mr. Dixon, Mr. Hand, Mr. Mellor, and Mr. Tringham.

Thereupon, Mr. Creveling and Mr. Dunn and Mr. Sperry left the room, and Mr. Dixon took the Chair.

I move that Mr. Dixon be named Chairman at this time if the previous selection of him as Chairman of the whole meeting should be found not to have been a valid selection.

Mr. Maguire: I second that.

Mr. Dixon: All those in favor signify by saying aye.

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 734] Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Opposed? The motion is carried.

Mr. Logan: Mr. Dixon, I move that the by-laws of the corporation be amended as follows:

First, that Article 11 be stricken out and there be substituted in lieu thereof the following:

"The property and business of this corporation shall be managed by its Board of Directors, consisting of fourteen directors. Directors need not be stockholders. They shall be elected at the Annual Meeting of Stockholders and each Director shall be directed to serve for one year or until his successor shall be elected and shall qualify. If the number of directors shall be increased by vote of the Board, the Board may elect new directors to complete the membership in the Board and such directors so elected shall hold office until the next Annual meeting of the Stockholders. The Directors may fill vacancies created by resignations, death, or refusal to serve of any member elected by the stockholders."

Second, that Article 22 be stricken out and there be substituted in lieu thereof the following:

[fol. 735] "The officers of the corporation shall be chosen by the stockholders and shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, and shall hold their respective offices for the term of one year and until their successors are duly elected and have qualified.

Any two offices may be held, and the duties performed, by one and the same person, except that the offices of President and Secretary must at all times be held and filled by two different persons."

Third, that Article 24 be stricken and there be substituted in lieu thereof the following:

"The salaries of all officers of the Corporation shall be fixed by the stockholders. The officers of the Corporation shall hold office until their successors are chosen and qualified in their stead. No officer or agent elected by the stockholders may be removed except for cause."

And fourth, that Article 42 be stricken out.

Mr. Hand: I second the motion.

Mr. Dixon: You have all heard the motion. Those in favor signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

[fol. 736] Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

The motion is carried.

Mr. Logan: I now call the attention of the meeting to the fact that during the earlier stage of this meeting while Mr. Creveling was still in the Chair seven directors were declared to be elected by the common stock and two were declared to be elected by the Class B Preferred stock.

Due to the fact that the By-Laws have now been amended to call for fourteen directors, there are five places on the Board to be filled.

I move that the meeting proceed to the nomination and election of five additional directors, and that ballots be distributed for that purpose and that the use of tellers and judges of election be dispensed with.

Mr. Hand: I second the motion.

Mr. Dixon: All those in favor signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 737] Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Opposed?

The motion is carried.

Mr. Logan: I now nominate for the office of director the following five persons to act in the five positions created by the amendment to the By-laws just adopted:

Joseph Bodell, Hubert E. Howard, David Boyd-Smith, Geoffrey Mellor, and William C. Tringham.

Mr. Hand: I second the nomination.

Mr. Dixon: Are there any further nominations?

A reasonable time has elapsed since we have opened the meeting for nominations, and only five persons have been nominated.

I will entertain a motion to close the nominations.

Mr. Maguire: I make that motion.

Mr. Tringham: I second it.

Mr. Dixon: All those in favor say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 738] Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

The motion is carried.

I hereby distribute the ballots to be used for the election of the five directors to fill the five additional places created by the amendment to the By-laws just made.

Mr. Logan: Mr. Chairman, I hand you a ballot signed by all stockholders and proxies present for the five persons nominated to fill the five offices created by the amendment to the By-Laws just adopted.

Mr. Dixon: I have received the ballot with the names of the five men nominated, which has been signed by all stockholders present in person or by proxy, and I declare the following elected as directors of Panhandle Eastern to serve until the next Annual Meeting of Stockholders or until their successors are duly elected and qualified:

William C. Tringham, Joseph J. Bodell, David Boyd-Smith, Geoffrey Mellor, and Hubert E. Howard.

Mr. Logan: Mr. Chairman, in view of the amendment to the By-laws of Article 22, I nominate the following to be [fol. 739] the officers of the corporation:

President, W. G. Maguire; Vice-President, Gerard J. Neuner; Leith V. Watkins, Secretary; and W. C. Tringham, Treasurer.

Mr. Dixon: Is there any second?

Mr. Hand: I second it.

Mr. Dixon: You have heard the nominations for the officers of the Company. Are there any further nominations?

Mr. Hand: I move the nominations be closed.

Mr. Maguire: I second it.

Mr. Dixon: All in favor of closing the nominations say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

The motion is carried.

All those in favor of the officers nominated please signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 740] Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

I hereby declare the persons named above elected for the respective positions for which they were nominated to serve until the next Annual Meeting of Stockholders and until their successors are duly elected and qualified.

Mr. Logan: I move that the salaries of the officers just elected be the same as that enjoyed by the same officers during the past year.

Mr. Hand: I second the motion.

Mr. Dixon: All those in favor signify by saying aye.

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

[fol. 741] The motion is carried.

Mr. Hand: Mr. Chairman, I offer the following resolutions:

Whereas by letter dated January 15, 1940 to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas this corporation, its officers and directors have failed and neglected to comply therewith in any respect; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, Therefore, be it resolved that this corporation take the actions set forth and described in paragraphs 1 to 6 inclusive of said letter of January 15, 1940; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, [fol. 742] Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Mellor: I second the motion.

Mr. Dixon: All those in favor of the resolution offered signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary?

I declare the Resolution unanimously carried.

Mr. Hand: Mr. Chairman, I offer the following resolution:

Whereas an action was filed this day in the United States [fol. 743] District Court for the District of Delaware by Missouri-Kansas Pipe Line Company and Lucille Dammann, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Michigan Gas Transmission Corporation, Gano Dunn and this corporation, asserting in

part derivative claims of this corporation against the said other defendants; and

Whereas said complaint asserts in part some of the causes of action which Missouri-Kansas Pipe Line Company demanded this corporation take in and by its letter of January 15, 1940, which is part of the minutes of this corporation of January 17, 1940;

Now, Therefore, Be It Resolved, that this corporation appear in said proceeding by counsel and ask leave to be made a party plaintiff to assert its rights and prosecute the same; and

Be It Further Resolved that this corporation prosecute its rights in such action with all due diligence; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to take action provided for herein; and

[fol. 744] Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Mellor: I second the motion.

Mr. Dixon: All those in favor signify by saying "Aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary?

The motion is carried.

Mr. Hand: I offer the following resolution:

Be It Resolved that the Board of Directors of this corporation be and hereby are instructed to forthwith redeem the outstanding Class A \$6.00 Participating Preferred Stock of this Company, and for that purpose to use such portion of the cash surplus of the corporation as they deem advisable, the balance to be raised by the Company through the sale of bonds, debentures, through bank loans or otherwise.

Mr. Mellor: I second it.

[fol. 745] Mr. Dixon: All those in favor signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary?

The motion is carried.

Mr. Hand: I move we adjourn.

Mr. Maguire: I second the motion.

Mr. Dixon: It has been moved and seconded that the meeting adjourn. All in favor say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: The meeting is adjourned.

[fol. 746] I, Leith V. Watkins, Secretary of Panhandle Eastern Pipe Line Company, do hereby certify that the attached is a true and complete copy of the By-laws of Panhandle Eastern Pipe Line Company with all amendments to date.

Witness my hand and the corporate seal of said Company, this 28th day of March, 1940.

(Sgd.) Leith V. Watkins, Secretary. (Corporate Seal.)

[fols. 747-748] Panhandle Eastern Pipe Line Company.

By-Laws

[fol. 749] Offices.

1. The principal office shall be in the City of Dover, County of Kent, State of Delaware, and the name of the resident agent in charge thereof is United States Corporation Company.

The corporation may also have an office in the City of Kansas City, State of Missouri, and also offices at such other places as the Board of Directors may from time to time appoint or the business of the corporation may require.

Seal

2. The corporation seal shall have inscribed thereon the name of the corporation, the year of its organization and the words, "Corporate Seal, Delaware."

Stockholders' Meetings.

3. All meetings of the stockholders shall be held at the office of the corporation in Kansas City, Missouri, or at such other place either within or without the State of Missouri as may be determined upon by the Board of Directors and specified in the notice of the meeting.

Section 3. By-laws. (Board of Directors Meeting of 12/22/37)

"3. All meetings of the stockholders other than the Annual Meeting, shall be held either at the principal office of the corporation in the City of Dover, State of Delaware, or at such other place either within or without the State of Delaware as the Board of Directors shall establish. The office at which any given meeting shall be held shall be distinctly specified in the notice of such meeting."

4. An annual meeting of stockholders shall be held on the second Monday of March in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, at 10 A. M., when they shall elect, by ballot, a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 4. By-Laws. (Board of Directors Meeting of 12/22/37)

"4. An annual meeting of the stockholders of the corporation, for the election of directors and for the transaction of such other business as may come before the meeting, shall be held at the principal office of the corporation in the City of Dover, State of Delaware, on the second Monday of March in each year, at two o'clock in the afternoon, unless such day shall fall on a legal holiday, in which event the annual meeting shall be held on the day following."

5. The holders of a majority of the stock issued and outstanding, and entitled to vote, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the trans-

action of business except as otherwise provided by law, by the Certificate of Incorporation or by these By-Laws. If, however, such majority shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote, present in person or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of voting stock shall be present. At such adjourned meeting at which the requisite amount of voting stock shall be represented any business may be transacted which might have been transacted at the meeting as originally notified.

6. At such meeting of stockholders, every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. Except where the transfer books of the Corporation shall have been closed on a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as provided in Section 35 of these By-Laws, no share of stock shall be voted on at any election for Directors which shall have been transferred on the books of the Corporation within twenty days next preceding such election of Directors. Persons holding stock as executors, administrators, guardians or trustees or who have pledged their stock shall be entitled to vote upon such stock, except that if in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, only the pledgee, or his proxy, may represent said stock and vote thereon. The [fol. 751] vote for Directors, and, upon the demand of any stockholder having the right to vote, the vote upon any question before the meeting shall be by ballot. At all elections of Directors by stockholders of the corporation, each stockholder of each class entitled to vote at such election shall be entitled to as many votes as shall equal the number of his shares of stock of such class, multiplied by the number of Directors to be elected by the holders of stock of such class, and he may cast all of such votes for a single Director, or may distribute them among the number to be voted for, or any two or more of them, as he may see fit. In all matters other than the election of Directors, and subject to the provisions of Subdivision V of Section B of Article Fourth of the Certificate of Incorporation of this Company, as

amended June 5, 1936, each stockholder shall be entitled to one vote for each share of stock, of whatever class, held by him. All questions other than the election of Directors shall be decided by a plurality vote.

7. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, and the number of voting shares held by each, shall be prepared by the Secretary and filed in the office where the election is to be held, at least ten days before every election, and shall at all times, during the usual hour of business, and during the whole time of said election be open to the examination of any stockholder.

8. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning twenty-five per cent of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

[fol. 752] 9. Business transacted at all special meetings shall be confined to the objects stated in the call.

10. Notice of any annual meeting of the stockholders shall be given in writing by the Secretary to each stockholder entitled to receive the same, by depositing the same, at least ten days before said meeting, in the United States mail in a postage prepaid envelope, addressed to each such stockholder at the last post office address appearing on the books of the corporation. Notice of any special meeting of the stockholders shall be given in like manner at least five days before the meeting. Notice of any meeting of stockholders shall state the time and place at which the same shall be held, and, in the case of a special meeting, the object or objects thereof, and the business transacted at any special meeting shall be confined to the objects stated in such notice. But any annual or special meeting may be held without notice provided all of the stockholders are present or duly represented by proxy at such meeting, or shall have waived notice in writing and consented to the holding thereof, and when all the stockholders are present or duly represented at such meeting, or shall have waived notice in writing and

consented to the holding thereof, any and all business may be transacted which may properly be brought before said meeting. The presence of any stockholder in person or by proxy at any meeting of the stockholders, however called or notified, or his written approval of the minutes of such meeting endorsed thereon, shall in itself constitute a waiver of notice of said meeting.

Directors

11. The property and business of this corporation shall be managed by its Board of Directors, consisting of such number of directors, not less than three, as may be determined upon from time to time by the board. Directors need not be stockholders. They shall be elected at the annual meeting of stockholders and each director shall be elected [fol. 753] to serve for one year or until his successor shall be elected and shall qualify. If the number of directors shall be increased by vote of the board, the board may elect new directors to complete the membership in the board and such directors so elected shall hold office until the next annual meeting of the stockholders.

12. The directors may have one or more offices and keep the books of the corporation, except the original or duplicate stock ledger, outside of the State of Delaware, at the office of the corporation in the City of Kansas City, Missouri, or at such other places as they may from time to time determine. All meetings of the directors shall be held in Kansas City, Missouri, or at such other place or places, whether within or without the State of Missouri, as they may from time to time determine.

13. The Board of Directors may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation, or by these By-Laws directed or required to be exercised or done by the stockholders.

Meetings of the Board

14. The newly elected board may meet at such place and time as shall be fixed by the vote of the stockholders at the annual meeting, for the purpose of organization or otherwise, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute

the meeting, provided, a majority of the whole board shall be present; or they may meet at such place and time as shall be fixed by the consent in writing of all the directors.

15. Regular meetings of the board may be held without notice at such time and place as shall from time to time be determined by the board.

[fol. 754] 16. Notice of any special meeting of the board shall be given to each director, either personally or by mail or by telegram, at least three days before said meeting. Notice of a special meeting shall state the time and place of such special meeting and the subject or subjects which will come before it. Meetings of the Board of Directors may be held at any time and place, without notice, provided all of the directors are present at such meeting, or shall have waived notice in writing and consented to the holding thereof, and when all of the directors are present at such meeting or have waived notice in writing and consented to the holding thereof, any and all business may be transacted which the Board of Directors may desire to transact. The presence of any Director at any meeting of the Board of Directors, however called or notified, or his written approval of the minutes of such meeting endorsed thereon, shall of itself constitute a waiver of notice of such meeting.

17. At all meetings of the Board of Directors, a majority of the board shall be requisite and sufficient to constitute a quorum for the transaction of business, and in case there be no quorum present, the directors present at such meeting, although less than a quorum, may adjourn the meeting from day to day or sine die. The act of a majority of the directors present at any meeting at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation.

Executive Committee

18. There may be an executive committee of two or more directors designated by resolution passed by a majority of the whole board. Said committee may meet at stated times, or on notice to all by any of their own number. During the intervals between meetings of the Board such committee shall advise with and aid the officers of the corporation in all matters concerning its interests and the management of

its business, and generally perform such duties and exercise such powers as may be directed or delegated by the Board of Directors from time to time. The Board may delegate to such committee authority to exercise all the powers of the board, except power to amend the By-Laws, while the Board is not in session. Vacancies in the membership of the committee shall be filled by the Board of Directors at a regular meeting or at a special meeting called for that purpose.

19. The executive committee shall keep regular minutes of its proceedings and report the same to the board when required.

Compensation of Directors

20. Directors, as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board; provided, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

21. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Officers

22. The officers of the corporation shall be chosen by the directors and shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, who shall be elected at the first meeting of the Board of Directors after the annual meeting of the stockholders, and shall hold their respective offices for the term of one year and until their successors are duly elected and have qualified. Any two offices may be held, and the duties performed, by one and the same person, except that the offices of President and Secretary must at all times be held and filled by two different persons. The President shall be chosen by the Directors from their own number.

[fol. 756] 23. The board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

24. The salaries of all officers of the corporation shall be fixed by the Board of Directors. The officers of the corporation shall hold office until their successors are chosen and qualified in their stead. Any officer or agent elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole board.

The President

25. (a) The President shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the board are carried into effect.

(b) He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation; shall keep in safe custody the seal of the corporation, and when authorized by the board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary or the Treasurer.

(c) He shall be ex officio a member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation.

Vice-President

26. Each Vice-President shall be vested with all the powers and required to perform all the duties of the President in his absence or disability, and the performance of any act or the execution of any instrument by a Vice-President [fol. 757] shall constitute conclusive evidence of the absence or disability of the President, and each Vice-President shall perform such other duties as may be prescribed by the Board of Directors.

The Secretary

27. The Secretary shall attend all sessions of the Board and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required. He shall give, or cause to be

given, notice of all meetings of the stockholders and of the Board of Directors. The Secretary shall also be chief accounting officer of the corporation and may also, by resolution of the Board of Directors, be appointed Controller of the corporation. He shall have such powers and perform such other duties as may be prescribed from time to time by the Board of Directors or the President, under whose supervision he shall be.

The Assistant Secretary

28. If the board appoints an Assistant Secretary, such assistant secretary shall be vested with all the powers and required to perform all the duties of the Secretary in his absence or disability and the performance of any act or the execution of any instrument by the Assistant Secretary shall constitute conclusive evidence of the absence or disability of the Secretary, and the Assistant Secretary shall perform such other duties as may be prescribed by the Board of Directors.

The Treasurer

29. (a) The Treasurer shall be the chief financial officer of the corporation and shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the Board of Directors.

(b) He shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meeting of the board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the corporation.

(c) He shall give the corporation a bond if required by the Board of Directors in a sum, and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and for the restoration to the corporation, in case of his death, resignation, retirement and removal from office, of all books, papers, vouchers,

money and other property of whatever kind in his possession or under his control belonging to the corporation.

The Assistant Treasurer

30. If the Board appoints an Assistant Treasurer, such Assistant Treasurer shall be vested with all the powers and required to perform all the duties of the Treasurer in his absence or disability, and the performance of any act or the execution of any instrument by the Assistant Treasurer shall constitute conclusive evidence of the absence or disability of the Treasurer, and the Assistant Treasurer shall perform such other duties as may be prescribed by the Board of Directors.

[fol. 759]

Vacancies

31. If the office of any director, or any officer or agent, one or more, becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the directors then in office, although less than a quorum, by a majority vote, may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

Duties of Officers May Be Delegated

32. In case of the absence of any officer of the corporation, or for any other reason that the board may deem sufficient, the board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director, provided a majority of the entire board concur therein.

Certificates of Stock

33. The certificates of stock of the corporation shall be numbered and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the President or a Vice-President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary.

Transfers of Stock

34. Transfers of stock shall be made on the books of the corporation only by the person named in the certificate or

by attorney, lawfully constituted in writing, and upon surrender of the certificate therefor.

[fol. 760] Closing of Transfer Books

35. The Board of Directors shall have the power to close the stock transfer books of the corporation for a period not exceeding fifty days preceding the date of any meeting of the stockholders or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors shall have power to fix in advance a date not exceeding fifty (50) days preceding the date of any meeting of the stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, and in such case only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, or to receive a payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of stock on the books of the corporation after any such record date fixed as aforesaid.

Registered Stockholders

36. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Delaware.

[fol. 761] Lost Certificates

37. Any person claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of that

fact and advertise the same in such manner as the Board of Directors may require, and shall if the directors so require give the corporation a bond of indemnity, in form and with one or more sureties satisfactory to the Board, in at least double the value of the stock represented by said certificate, whereupon the new certificate may be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed.

Inspection of Books

38. The Directors shall determine from time to time, whether, and, if allowed, when and under what conditions and regulations the accounts and books of the corporation (except such as are by statute specifically required to be open to inspection) or any of them shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted and limited accordingly.

Checks

39. All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Dividends

40. Dividends upon the capital stock of the corporation may be declared by the Board of Directors at any regular or special meeting out of the net assets of the Company in excess of its capital, or in case there shall be no such excess out of its net profits for the fiscal year, then current [fol. 762] and/or the preceding fiscal year, as provided in the laws of the State of Delaware relative to corporations and the charter of the Company.

Before payment of any dividend or making any distribution of profit, there may be set aside out of the surplus or net profits of the corporation such sum or sums as the Directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purposes as the directors shall think conducive to the interests of the corporation.

Notices

41. Whenever, under the provisions of these By-Laws, notice is required to be given to any director, officer, or stockholder, it shall be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in the post-office or letter-box in a postpaid sealed wrapper, addressed to such stockholder, officer or director at such address as appears on the books of the corporation, or, in default of other address, to such director, officer or stockholder at the General Post Office in the City of Kansas City, Missouri, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Amendments

42. These By-Laws may be altered or amended by the affirmative vote of a majority of the stock issued and outstanding and entitled to vote at any regular or special meeting of the stockholders, if notice of the proposed alteration or amendment be contained in the notice of the meeting, or by the affirmative vote of a majority of the Board of Directors; provided, however, that no change of the time or place for the election of directors shall be made within sixty days next before the day on which such election is to be held.

[fol. 763] I, Leith V. Watkins, Secretary of Panhandle Eastern Pipe Line Company, do hereby certify that the attached is a true and complete copy of the Notice of Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company held at the principal office of the Company, No. 19-21 Dover Green, in the City of Dover; State of Delaware, on Monday, March 11, 1940, at 2:00 o'clock P. M., as mailed to all holders of all classes of stock of said Company on February 28, 1940.

Witness my hand and the corporate seal of said Company, this 28th day of March, 1940.

(Sgd.) Leith V. Watkins, Secretary. (Corporate Seal.)

[fol. 764] Panhandle Eastern Pipe Line Company

Notice of Annual Meeting of Stockholders to Be Held March
11, 1940

Notice Is Hereby Given that the Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, will be held at the principal office of the Company, No. 19-21, Dover Green, in the City of Dover, State of Delaware, on Monday, March 11, 1940, at 2:00 o'clock P. M., for the following purposes:

1. To elect a Board of Directors for the ensuing year;
2. To consider and act upon a proposed amendment to the Certificate of Incorporation of the Company whereby the seventh paragraph of Subdivision I of Section B of Article Fourth will be amended to read as follows:

"After the requirements in respect of the preferential dividends upon the Preferred Stock of both classes, as hereinbefore set forth, to the end of the then current quarterly dividend period for said stock shall have been met, and after the provisions of the immediately preceding paragraph shall have been complied with, and not otherwise, the holders of the Common Stock shall be entitled to receive, out of the remaining net profits or net assets of the corporation applicable to dividends, dividends at a rate not to exceed One Dollars and Fifty Cents (\$1.50) per share per annum, before any participating dividends shall be declared or paid upon or set apart for the Class A Preferred Stock and the Common Stock as hereinafter provided. In the event of the issue of additional Common Stock during any year all such dividends paid on the Common Stock in such year prior to the issue of such additional Common Stock and all such dividends declared and payable to holders of record of Common Stock on a date in such year prior to such additional issue, shall be deemed to have been paid on the additional Common Stock so issued."

and

3. To transact such other business as may properly come before the meeting or any adjournment or adjournments thereof.

If any stockholder is unable to be present at the meeting and wishes his stock voted thereat he should sign and return

the enclosed form of proxy. No postage is required if the proxy card is mailed in the United States. If you prefer you may enclose it in your own envelope to which the usual postage stamp must be affixed before mailing.

By Order of the Board of Directors.

Leith V. Watkins, Secretary.

Dated, New York, N. Y. February 28, 1940.

[fol. 765] AFFIDAVIT OF GANO DUNN IN SUPPORT OF MOTION
OF COLUMBIA GAS TO DISMISS APPLICATION OF PANHANDLE
EASTERN PIPE LINE COMPANY

STATE OF NEW YORK,
County of New York, ss:

Gano Dunn, being duly sworn, deposes and says:

I am the trustee appointed by and acting under a Decree, dated January 29, 1936, entered by the United States District Court for the District of Delaware in the cause entitled "United States of America, Petitioner, v. Columbia Gas & Electric Corporation, et al.; In Equity No. 1099."

I attended the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, at the office of the Company at No. 19-21 Dover Green, Dover, Delaware. At such meeting, I voted the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation on various matters which came before the meeting. The record of my voting at this meeting is contained in the transcript of the proceedings which occurred at said meeting, which transcript, certified as true and correct by Harry J. Blam, official shorthand reporter for the Delaware law courts, is attached to the affidavit of Joe D. Creveling, dated March 28, 1940, filed in the above cause.

[fol. 766] The votes which I cast at said meeting were pursuant to the authority given to me by the above-mentioned Decree and by instructions which I received from Mr. D. M. Wilson, Vice-President of Columbia Oil & Gasoline Corporation acting in the vacancy of the office of President. The instructions which I received from Mr. Wilson representing Columbia Oil & Gasoline Corporation were that I should vote the shares of stock of Panhandle Eastern Pipe Line

Company beneficially owned by Columbia Oil & Gasoline Corporation, and standing in my name as Trustee, in favor of the amendment to the Articles of Incorporation proposed by the board of directors of Panhandle Eastern Pipe Line Company for adoption by the shareholders at the annual meeting of Panhandle Eastern Pipe Line Company; that as to all other matters except directors, which might come before said meeting, I should vote said shares as, in my discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which I had any doubt as to how to vote, I could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation; and that as regards directors, Columbia Oil & Gasoline Corporation recommended in conference with me certain persons as directors of Panhandle Eastern Pipe Line Company and from among the persons so recommended I selected, in addition to myself, as the 6 of the 9 directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation was entitled to elect, the following persons: Joseph A. Bower, Joe D. Creveling, Walter G. Mortland, Richard C. Patterson, Jr. and Robert C. Winmill. Subsequent to obtaining the aforementioned instructions and prior to the meeting of stockholders, the instruction in respect of voting in favor of the above-mentioned amendment to the Articles of Incorporation was countermanded and I was instructed by Columbia Oil & Gasoline Corporation not to vote on this question.

(Sgd.) Gano Dunn.

Sworn to and subscribed before me this 28th day of March, 1940. (Sgd.) John Vogt. Notary Public, Queens County No. 1979, Reg. No. 5231. Certificate filed in New York Co. No. 25, Reg. 1-V-19. Commission expires March 30, 1941. (Notarial Seal.)

[fol. 768] AFFIDAVIT OF DON M. WILSON IN SUPPORT OF
MOTION OF COLUMBIA GAS TO DISMISS APPLICATION OF PAN-
HANDLE EASTERN PIPE LINE COMPANY

STATE OF NEW YORK,
County of New York, ss:

Don M. Wilson, being duly sworn, deposes and says:

I am the Vice-President of Columbia Oil & Gasoline Corporation. Since June, 1939, the office of President of said corporation has been vacant and I have been acting in the capacity of chief executive officer of the corporation and as the presiding officer at all meetings of the board of directors.

On March 5, 1940, I directed Mr. Gano Dunn, who has been appointed by this Court in the consent decree entered in the above entitled cause on January 29, 1936, as trustee of the stock of Panhandle Eastern Pipe Line Company owned by Columbia Oil & Gasoline Corporation, that he should vote said shares of stock at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company to be held on March 11, 1940, in favor of the amendment to the Articles of Incorporation proposed by the board of directors of Panhandle Eastern Pipe Line Company for adoption by the shareholders at said annual meeting; that as to all other matters except election of directors, which might come before said meeting, he should vote said shares as, in his discretion, seemed best for the interest of Pan-[fol. 769] handle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which he had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation.

On March 8, 1940, at a special meeting of the board of directors of Columbia Oil & Gasoline Corporation, I submitted to said board for its approval the aforesaid directions which I had given to Mr. Dunn regarding the voting of the shares of stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company to be held on March 11, 1940. At said special meeting, the board of directors of Columbia Oil & Gasoline Corporation duly adopted a

resolution approving said directions. A true and correct copy of an excerpt from the minutes of said meeting of the board of directors of Columbia Oil & Gasoline Corporation relating to said directions and of said resolution, is as follows:

“Panhandle Eastern Pipe Line Company

The Chairman reported that at a meeting with Mr. Gano Dunn, Trustee, his counsel, and with counsel for this corporation, he had directed Mr. Dunn to vote the shares of stock of Panhandle Eastern Pipe Line Company beneficially owned by this corporation, and standing in his name as Trustee, in favor of the amendment to the Articles of Incorporation proposed by the board of directors of Pan-[fol. 770] handle for adoption by the shareholders at the forthcoming annual meeting of Panhandle; that as to all other matters except directors, which might come before said meeting he had directed Mr. Dunn to vote said shares as, in his discretion, seemed best for the interest of Panhandle and generally to support the management; that, in case any matters were presented at the meeting on which Mr. Dunn had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of this corporation; and that as regards directors, he suggested sending the following letter to Mr. Dunn:

March 8, 1940.

Mr. Gano Dunn, Trustee, 80 Broad Street, New York, N. Y.

DEAR MR. DUNN:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower	165 Broadway	New York City
Joe D. Creveling	90 Broad Street.	New York City
Gano Dunn	80 Broad Street	New York City
Walter G. Mortland	37 East 64th St.	New York City

Richard C. Patterson, Jr.

1270 Sixth Avenue

New York City

Robert C. Winnill

1 Wall Street

New York City

Very truly yours, (Sgd.) D. M. Wilson, Vice President.

Thereupon, after discussion, on motion duly made and seconded, it was unanimously

Resolved that the aforesaid action and suggestion of the Chairman be and hereby are approved."

Before determining upon the six directors above named, Columbia Oil & Gasoline Corporation recommended in conference with Mr. Dunn certain persons as directors of Panhandle Eastern Pipe Line Company, and from among the persons so recommended Dr. Dunn selected the six above named, as the six of the nine directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation was entitled to elect.

On March 9, 1940, I received a letter, dated March 8, 1940, addressed to Columbia Oil & Gasoline Corporation at its Wilmington office, from Arthur G. Logan, as attorney for Missouri-Kansas Pipe Line Company, a true copy of which is as follows:

"Arthur G. Logan
Attorney at Law
Delaware Trust Building
Wilmington, Delaware

March 8, 1940.

Columbia Oil and Gasoline Corporation, Delaware Trust Building, Wilmington, Delaware.

GENTLEMEN:

As you know the Board of Directors of Panhandle Eastern Pipe Line Company have proposed that the certificate of incorporation of Panhandle Eastern Pipe Line Company be amended by a vote of stockholders at the forthcoming annual meeting. This proposed amendment would change the terms and provisions of the outstanding Class "A" \$6 participating preferred stock. As counsel for Missouri-

Kansas Pipe Line Company, may I point out to you that the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company voted against the proposed amendment and that at the annual meeting Missouri-Kansas Pipe Line Company will vote its shares of the common stock of Panhandle Eastern Pipe Line Company against the proposed amendment. This means that the amendment can only be passed, through the vote of the preferred and common stock standing in the name of Mr. Gano Dunn, but Beneficially owned by you. By the provisions of Paragraph III (b) of the consent decree entered on January 29, 1936, Mr. Dunn can only vote said stock on this proposed amendment as directed by you.

May I inquire on behalf of Missouri-Kansas Pipe Line Company whether or not you have directed, or intend to direct, Mr. Gano Dunn to vote said stock in favor of the amendment. If so, may I point out that the terms and [fol. 772] provisions of this Class "A" \$6. participating preferred stock were fixed by contract, viz., the contract of June 1, 1936 between yourself, Columbia Gas and Electric Corporation and the receivers of Missouri-Kansas Pipe Line Company acting on its behalf. If the stock held by Mr. Gano Dunn is voted in favor of the amendment, and thus the terms and provisions of said Class "A" \$6 participating preferred stock are changed from those set forth in the contract of June 1, 1936, Missouri-Kansas Pipe Line Company will consider that you have repudiated and breached said contract of June 1, 1936.

Yours truly, (Signed) Arthur G. Logan."

AGL: KR.

Thereupon, after discussing said letter with several of the members of the board of directors of Columbia Oil & Gasoline Corporation and after obtaining their approval to a modification of the instructions to Mr. Gano Dunn to the extent hereinafter set forth, I modified the instructions aforesaid to Mr. Gano Dunn by Letter dated March 9, 1940, a true copy of which is as follows:

"March 9, 1940.

Mr. Gano Dunn, Trustee, 80 Broad Street, New York, N. Y.

DEAR MR. DUNN:

With reference to the amendment proposed by the Board of Directors of Panhandle Eastern Pipe Line Company to

be made to the certificate of incorporation of Panhandle Eastern Pipe Line Company at the annual meeting of the shareholders scheduled to be held Monday, March 11th, I wish to advise you that Columbia Oil & Gasoline Corporation desires that you as titular owner of the shares of stock of that corporation beneficially owned by Columbia Oil & Gasoline Corporation refrain from voting said shares on the proposal for the adoption of such amendment.

We are enclosing herewith a copy of a letter which Mr. William H. Button, general counsel of the corporation, has [fol. 773] sent to Mr. Arthur G. Logan, attorney for the Missouri-Kansas Pipe Line Company, in reply to Mr. Logan's letter of March 8th to the Columbia Oil & Gasoline Corporation, a copy of which we are informed was sent to you.

This letter supersedes any previous instructions which may have been given you in regard to voting the shares beneficially owned by Columbia Oil & Gasoline Corporation on the proposed amendment.

Very truly yours, Columbia Oil & Gasoline Corporation, by (Signed) Don M. Wilson, Vice President."

Pursuant to my directions and with the approval of several members of the board of directors of Columbia Oil & Gasoline Corporation, Mr. William H. Button, as counsel of said corporation and on its behalf, replied to the aforesaid letter received from Arthur G. Logan by letter dated March 9, 1940, a true copy of which is as follows:

"March 9, 1940.

Mr. Arthur G. Logan, Attorney for Missouri-Kansas Pipe Line Company, Delaware Trust Building, Wilmington, Delaware,

MY DEAR MR. LOGAN:

Mr. Wilson, Vice-President of the Columbia Oil & Gasoline Corporation, has called my attention to your letter of March 8, 1940 addressed to the Columbia Oil & Gasoline Corporation in reference to the proposed amendment to the certificate of incorporation of the Panhandle Eastern Pipe Line Company that has been recommended by the Board of Directors of that company, and which amendment, I understand, will be presented for action to the meeting of the stockholders of that company to be held on the 11th instant,

and in which communication you protest against the adoption of such amendment on the ground that it would be a breach of the contract now existing between the Columbia Oil & Gasoline Corporation, the Columbia Gas & Electric Corporation, and the Receivers of the Missouri-Kansas Pipe Line Company to whose rights, I understand, your client has succeeded.

[fol. 774] Columbia Oil & Gasoline Corporation does not agree with the position taken by your client the Missouri-Kansas Pipe Line Company that the voting of the shares of common stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation in favor of the proposed amendment to the certificate of incorporation would violate the terms of that contract. It is its view that the proposed amendment serves to clarify as well as to carry out the true intention and interpretation of the present provisions of the certificate of incorporation. Nevertheless the matter is of such minor importance in view of the possible early retirement pursuant to the terms of the Plan incorporated in the joint motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation now pending before Judge Nichols in the Delaware District Court of the entire issue of \$10,000,000 par value Class A 6% preferred stock that Columbia Oil & Gasoline Corporation has determined to take no part in supporting the amendment.

Very truly yours, (Signed) William H. Button, Counsel for Columbia Oil & Gasoline Corporation."

At a special meeting of the board of directors of Columbia Oil & Gasoline Corporation duly held on March 20, 1940, I reported to the board the action which had been taken on behalf of Columbia Oil & Gasoline Corporation in modifying its instructions to Mr. Gano Dunn as a result of the aforementioned letter received from Arthur G. Logan and also the action which Mr. Gano Dunn had taken at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company which was held on March 11, 1940, in voting the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation pursuant to such instructions, as modified, as aforesaid, and thereupon resolutions were duly adopted by said [fol. 775] board approving, ratifying and confirming said actions. A true and correct copy of excerpts from the min-

utes of said meeting of the board of directors of Columbia Oil & Gasoline Corporation relating to said board's action on these matters and of said resolutions, is as follows:

"Panhandle Eastern Pipe Line Company

The Chairman reported that after receiving a letter dated March 8, 1940 from Mr. Arthur G. Logan, Delaware Trust Building, Wilmington, Delaware, attorney for Missouri-Kansas Pipe Line Company, he consulted with various Directors of Columbia Oil & Gasoline Corporation, and as a result the chairman notified Mr. Gano Dunn, Trustee, by letter on March 9, 1940 that, at the Annual Stockholders' meeting of Panhandle Eastern Pipe Line Company on March 11, 1940 he was to refrain from voting on the proposed amendment to the Panhandle Eastern Certificate of Incorporation; further, the Chairman presented to the meeting copies of the two letters above mentioned, together with a copy of Mr. Button's letter of March 9, 1940 to Mr. Logan, all three of which are attached to and are part of these Minutes. Thereupon, after discussion, on motion duly made and seconded, it was unanimously

Resolved that the aforesaid actions of the Chairman and of Counsel be and hereby are approved.

The Chairman stated that he had received an official stenographic transcript of the proceedings of the Annual Meeting of the Stockholders of the Panhandle Eastern Pipe Line Company held at Dover, Delaware, on Monday, March 11, 1940, at which meeting Mr. Gano Dunn, Trustee appointed under the provisions of the Consent Decree entered in the District Court of the United States for the District of Delaware on January 29, 1936, in the case of United States of America, versus Columbia Gas & Electric Corporation, et al., No. 1099 in Equity, voted for the election of Directors of said Panhandle Company and voted on certain other propositions that came before said meeting. Copies of this stenographic Transcript of said meeting were furnished to all Directors present and considered by them.

[fol. 776] Upon consideration of said Minutes and of the manner in which said Gano Dunn, Trustee, had voted the stock in the said Panhandle Company, the beneficial ownership of which is in this corporation, it was

Resolved that all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said Stockholders' Meeting be and the same hereby are in all respects approved, ratified and confirmed."

I have been informed, and verily believe, that Missouri-Kansas Pipe Line Company, by its attorneys, Arthur G. Logan and Logan & Duffy, on or about March 13, 1940, has instituted an action against Panhandle Eastern Pipe Line Company, Joe D. Creveling, Louis F. Sperry, Joseph J. Bodell, David Boyd-Smith, Hubert E. Howard, Geoffrey Mellor and William C. Tringham, in the Court of Chancery of the State of Delaware, in and for New Castle County, which is now pending in said Court, and a copy of the complaint filed by Missouri-Kansas Pipe Line Company in said action is annexed hereto as Exhibit "A" and made a part hereof.

(Sgd.) Don M. Wilson.

Sworn to and subscribed before me this 28th day of March, 1940. (Sgd.) John F. Clancy, Notary Public; New York Co. Clerk's No. 95; New York Co. Register No. 1C183. Term expires March 30, 1941. (Notarial Seal.)

[fol. 777] EXHIBIT "A" TO AFFIDAVIT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE, IN
AND FOR NEW CASTLE COUNTY

MISSOURI-KANSAS PIPE LINE COMPANY, Complainant,
vs.

PANHANDLE EASTERN PIPE LINE COMPANY, JOE D. CREVELING,
Louis F. Sperry, Joseph J. Bodell, David Boyd-Smith,
Hubert E. Howard, Geoffrey Mellor and William C.
Tringham, Respondents

BILL OF COMPLAINT UNDER SECTION 31 OF THE DELAWARE
CORPORATION LAW

To the Chancellor of the State of Delaware:

Humbly complaining, your Orator, Missouri-Kansas Pipe Line Company, sheweth unto your Honor as follows:

1. Your Orator, Missouri-Kansas Pipe Line Company, is a corporation duly organized and existing under and by vir-

tue of the laws of the State of Delaware and is the owner and holder of record of 339,275 shares of the common stock of Panhandle Eastern Pipe Line Company out of a total issued and outstanding of 807,367 shares.

2. The respondent Panhandle Eastern Pipe Line Company is a corporation duly organized and existing under the laws of the State of Delaware.

3. The individual defendants above named, except William C. Tringham, are all non-residents of the State of Delaware and their home or office addresses are as follows:

Joe D. Creveling—c/o Panhandle Eastern Pipe Line Company, 90 Broad street, New York City.

Louis F. Sperry—c/o Panhandle Eastern Pipe Line Company, 90 Broad Street, New York City.

[fol. 778] Joseph J. Bodell—Providence, Rhode Island.

David Boyd-Smith—327 So. LaSalle Street, Chicago, Illinois.

Hubert E. Howard—230 No. Michigan Avenue, Chicago, Illinois.

Geoffrey Mellor—Room 1560, 120 Broadway, New York City.

William C. Tringham—Room 248, Delaware Trust Building, Wilmington, Delaware.

4. That on the 11th day of March, A. D. 1940, at 2 o'clock p. m., the annual meeting of stockholders of Panhandle Eastern Pipe Line Company for the election of directors was duly called and held at the offices of the corporation within the State of Delaware at 19 Dover Green, Dover, Delaware. More than a quorum were in attendance and the meeting proceeded to the election of directors, at which time the By-Laws were amended to provide for 14 directors and the following were elected to serve until the next annual meeting of stockholders and until their successors are duly elected and qualified: William G. Maguire, A. Faison Dixon, Robert J. Bulkley, Gano Dunn, Joe D. Creveling, Joseph A. Bower, Walter G. Mortland, Robert C. Winmill, Richard C. Paterson, Joseph J. Bodell, David Boyd-Smith, Hubert E. Howard, Geoffrey Mellor, William C. Tringham.

5. At said meeting the By-Laws of the corporation were changed to provide for the election of officers by stock-

holders, whereupon the following were duly elected as the [fol. 779] officers of the corporation:

William G. Maguire, President.
Gerard J. Neuner, Vice President.
Leith V. Watkins, Secretary.
William C. Tringham, Treasurer.

6. That prior to the holding of said annual meeting and until the election aforesaid, the following were directors of the corporation: John E. Bierwirth, Joseph A. Bower, Joe D. Creveling, A. Faison Dixon, Gano Dunn, William G. Maguire, Walter G. Mortland, Kenneth E. Walser, Robert C. Winmill.

7. That prior to said meeting and until the election aforesaid, the following were the officers of the corporation:

J. C. Creveling, President.
Gerard J. Neuner, Vice President in Charge of Operations.
Robert D. Field, Vice President.
Leith V. Watkins, Secretary and Controller.
Louis F. Sperry, Treasurer.

8. That at said annual meeting Joe D. Creveling presided and declared that only the following were elected as directors: William G. Maguire, A. Faison Dixon, Robert J. Bulkley, Gano Dunn, Joe D. Creveling, Joseph A. Bower, Walter G. Mortland, Robert C. Winmill, Richard C. Paterson, and refused to recognize the validity of the election of the other five persons above named, namely: Joseph J. [fol. 780] Bodell, David Boyd-Smith, Hubert E. Howard, Geoffrey Mellor and William C. Tringham. Furthermore, a majority of the nine directors declared by the said Joe D. Creveling to have been the only ones elected to the Board, viz., Gano Dunn, Joe D. Creveling, Joseph A. Bower, Walter G. Mortland, Robert C. Winmill and Richard C. Paterson, refuse to recognize the validity of the election of said other five, namely: Messrs. Bodell, Boyd-Smith, Howard, Mellor and Tringham.

9. At said meeting, Mr. Creveling refused to recognize the validity of the election of William G. Maguire as president and of William C. Tringham as treasurer, and was and is supported in such refusal by a majority of the nine persons he declared were elected as directors. The said

Joe D. Creveling and a majority of said nine persons claim that the office of President is held by Joe D. Creveling, while William G. Maguire, a minority of said group of nine, and all of the group of five above mentioned claim that W. G. Maguire is the President, having been validly elected at said annual meeting.

10: The said Joe D. Creveling and Louis F. Sperry and said majority of the group of nine above mentioned claim that the office of Treasurer is held by Louis F. Sperry and refuse to recognize the validity of the election thereto of William C. Tringham, while William C. Tringham, a minority of the group of nine and all of the group of five claim that said William C. Tringham was duly and validly elected to the office of Treasurer.

[fol. 781] 11. Said Joe D. Creveling and Louis F. Sperry are holding the offices of President and Treasurer, respectively, without right and are preventing William C. Maguire and William C. Tringham from acting in said offices and Joe D. Creveling and said majority of the group of nine above mentioned have refused and continue to refuse to recognize that the five above mentioned, viz., Messrs. Bodell, Boyd-Smith, Howard, Mellor and Tringham, were duly and validly elected to the Board. Joe D. Creveling and said majority of the group of nine contend that the Board consists only of the nine above mentioned.

12. Your Orator says that unless this Honorable Court hear and determine the validity of the election of the directors in said group of five above mentioned, and hear and determine the validity of the election of William G. Maguire, as President and William C. Tringham, as Treasurer, and determine the persons entitled to the offices of President and Treasurer, the respondent corporation and your Orator, as a substantial stockholder thereof, will be greatly and irreparably injured and damaged.

Wherefore, your Orator, being without remedy save in this Honorable Court, prays as follows:

(1) That a subpoena issue directed to the respondent Panhandle Eastern Pipe Line Company commanding it to appear herein and answer this bill of complaint.

(2) That the Chancellor hear and determine the validity of the election of Joseph J. Bodell, David Boyd-Smith,

Hubert E. Howard, Geoffrey Mellor and William C. Tringham to the Board of Directors of Panhandle Eastern Pipe [fol. 782] Line Company at the annual meeting of stockholders held on March 11, 1940, and declare that said persons were duly and validly elected to said Board of Directors.

(3) That the Chancellor hear and determine the validity of the election of William C. Maguire to the office of President and William C. Tringham to the office of Treasurer of the respondent corporation, and determine that they are the persons entitled to said offices and not Joe D. Creveling and Louis F. Sperry, claimants to said offices.

(4) That an order be entered herein providing that copies of this bill of complaint be served upon the corporate resident agent of Panhandle Eastern Pipe Line Company, namely, U. S. Corporation Company, 19 Dover Green, Dover, Delaware, and that such service shall be deemed to be service upon the corporation and upon the persons whose title to office is contested as aforesaid and upon the persons claiming the offices as aforesaid.

(5) That such further proceedings be had under the provisions of Section 31 of the General Corporation Law as the Chancellor shall deem necessary and proper;

(6) And for such other and further relief as to the Chancellor shall seem meet and proper.

Missouri-Kansas Pipe Line Company, by (Sgd.)
Wm. C. Tringham, Secretary.

Attest: (Sgd.) Wm. C. Tringham, Secretary.

Arthur G. Logan, Logan and Duffy, Solicitors for Complainant.

[fol. 783] *Duly sworn to by Wm. C. Tringham. Jurat omitted in printing.*

[fol. 784] IN UNITED STATES DISTRICT COURT

MOTION OF COLUMBIA OIL & GASOLINE CORPORATION TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed March 29, 1940

Columbia Oil & Gasoline Corporation, a defendant in the above entitled cause, by Daniel O. Hastings, its attorney,

now moves the Court, upon the affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson annexed hereto, and upon the proceedings heretofore had in the above entitled cause, to dismiss the alleged application of Panhandle Eastern Pipe Line Company for leave to become a party hereto and for other relief, made herein on or about March 23, 1940, on the ground that said application was not authorized by Panhandle Eastern Pipe Line Company, that the attorneys whose names appear on said application as attorneys for Panhandle Eastern Pipe Line Company were not authorized by that company to act in its behalf in bringing or prosecuting such application or otherwise, and that Gano Dunn, appointed by this Court in the consent decree entered in the above entitled cause on January 29, 1936, as trustee of all the stock of Panhandle Eastern Pipe Line Company owned by Columbia Oil and Gasoline Corporation, duly voted said shares of stock on all matters on which he voted said stock at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, as shown by the official stenographic transcript [fol. 785] of the proceedings which occurred at said meeting, in accordance with the provisions of said consent decree and pursuant to valid directions from Columbia Oil & Gasoline Corporation.

(Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation, 400 Industrial Trust Building, Wilmington, Delaware.

[fol. 786] Exhibits annexed to foregoing motion of Columbia Oil & Gasoline Corporation, same as exhibits annexed to motion of Columbia Gas & Electric Corporation and not repeated here, viz.:

1. Affidavit of Joe D. Creveling annexed to motion of Columbia Gas & Electric Corporation. [See page 628.]

2. Minutes of annual meeting of stockholders of Panhandle Eastern Pipe Line Company held March 11, 1940. [See page 631.]

3. Copy of By-laws of Panhandle Eastern Pipe Line Company. [See page 747.]

4. Notice of annual meeting of stockholders of Panhandle Eastern Pipe Line Company to be held March 11, 1940, at Dover, Del. [See page 764.]

5. Affidavit of Don M. Wilson. [See page 768.]

6. Copy of bill of complaint filed under Section 31 of the Corporation Laws of the State of Delaware in the Court of Chancery of the State of Delaware in and for New Castle County. [See page 777.]

[fol. 787] AFFIDAVIT OF GANO DUNN IN SUPPORT OF MOTION OF COLUMBIA OIL TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY.

STATE OF NEW YORK,
County of New York, ss:

Gano Dunn, being duly sworn, deposes and says:

I am the Trustee of the shares of stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil & Gasoline Corporation, appointed by this Court in the Consent Decree entered in the above entitled cause on January 29, 1936, and I am duly acting as such Trustee pursuant to the provisions of said Consent Decree.

The provisions of said Consent Decree relating to my appointment as such Trustee and the powers vested in me with respect to such stock are as follows:

“That Gano Dunn is hereby nominated, constituted and appointed trustee for the purposes and with the powers and duties set forth in this Section III;

That within 10 days after the entry of this decree Columbia Oil shall execute, and deposit with said trustee the agreements and offers executed by it in accordance with, its agreements set forth in Section V of the stipulation pursuant to which this decree is entered;

That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

[fol. 788] (a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recom-

mended by the Beneficial owner of said stock, in conference and with the advice of the trustee, but not including any of the individual defendants herein or any one (except with the approval of the trustee and this Court) who after January 1, 1931, has been or hereafter becomes an officer, director, agent or employee of Columbia Gas; and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;

(c) To deposit for safe-keeping the certificates for such stock with such bank or trust company as he may select and to issue, or arrange for the issuance, by such bank or trust company to the defendant Columbia Oil, of receipts for the stock so deposited in such form as the trustee may approve;

* (d) To receive reasonable compensation, the amount thereof to be approved by this Court at not less than \$15,000.00 per annum, for all services rendered by him as trustee, and to be reimbursed for any expenses incurred by him in the performance of his duties hereunder, upon quarterly accounts to this Court, which, when approved by the Court, shall be paid in equal shares by the defendants Columbia Gas and Columbia Oil;

[fol. 789]. (e) To pay over to Columbia Oil all dividends received upon said stock, except that dividends in the form of stock having present or potential voting rights shall be

* This paragraph (d) in respect to compensation and the method of its approval was subsequently modified by an amendment to the decree entered June 19th, 1936. G. D.

retained by the trustee subject to the same terms and conditions as the other shares held hereunder;

(f) To exercise all rights to subscribe to additional stock or other securities of Panhandle Eastern as Columbia Oil may direct;

(g) To report to this Court semi-annually; and to account for any action hereunder only in proceedings in this Court, any further order of this Court entered upon notice to such trustee and to the parties hereto shall be full protection to him for any action taken pursuant thereto, and the trustee shall not be personally responsible for mistakes in judgment or mistakes of law or fact in the execution of his duties hereunder but only for lack of good faith;"

On March 5, 1940, and prior to the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company, which was held on March 11, 1940, I received from Mr. Don M. Wilson, Vice-President of Columbia Oil & Gasoline Corporation, acting in the vacancy of the office of President, instructions that I should vote at said meeting the shares of stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation, and standing in my name as Trustee, in favor of the amendment to the Articles of Incorporation proposed by the Board of Directors of Panhandle Eastern Pipe Line Company for adoption by the shareholders at said annual meeting; that as to all other matters, except directors, which might come before said meeting, I should vote said shares as, in my discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company, and generally to support said management; that in case any matters were presented at the meeting on which I had any doubt as to how to vote, I could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation. As regards the directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil & Gasoline Corporation, was entitled to elect, Mr. Wilson, representing Columbia Oil & Gasoline Corporation recommended in conference with me certain persons as directors of Panhandle Eastern Pipe Line Company and from among the persons so recommended I se-

lected, in addition to myself, as the 6 of the 9 directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation was entitled to elect, the following persons: Joseph A. Bower, Joe D. Creveling, Walter G. Mortland, Richard C. Patterson, Jr., and Robert C. Winnill. Thereafter, and prior to the annual meeting of stockholders of Panhandle Eastern Pipe Line Company aforementioned, I received two letters from Mr. Wilson, representing Columbia Oil & Gasoline Corporation, one, dated March 8, 1940, recommending that I elect the aforementioned persons selected by me as aforesaid as directors of Panhandle Eastern Pipe Line Company, and the other, dated March 9, 1940, modifying his previous instructions to the extent that I should refrain from voting the shares of stock of Panhandle Eastern Pipe Line Company, held by me as Trustee, at said annual meeting on the amendment to the Articles of Incorporation of Panhandle Eastern Pipe Line Company which had been proposed by its board of directors.

I attended the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, at the office of the Company at No. 19-21 Dover Green, [fol. 791] Dover, Delaware. At such meeting I voted the stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil & Gasoline Corporation, on various matters which came before the meeting pursuant to the authority vested in me by the above-mentioned Consent Decree and pursuant to the aforementioned instructions, as modified, which I had received from Mr. Wilson as Vice-President of Columbia Oil & Gasoline Corporation. The record of my voting at said annual meeting is contained in the transcript of the proceedings which occurred at said meeting, which transcript, certified as true and correct by Harry J. Blam, official shorthand reporter for the Delaware law courts, is attached to the affidavit of Joe D. Creveling, dated March 28, 1940, which is being submitted in support of the motion of Columbia Oil & Gasoline Corporation to dismiss the alleged application of Panhandle Eastern Pipe Line Company for leave to become a party to the above entitled cause and for other relief.

This affidavit is also made in support of said motion of Columbia Oil & Gasoline Corporation to dismiss said al-

leged application of Panhandle Eastern Pipe Line Company.

(Sgd.) Ganio Dunn.

Subscribed and sworn to before me this 28th day of March, 1940. (Sgd.) John Vogt, Notary Public, Queens County, No. 1979, Reg. No. 5231. Certificate filed in New York Co. No. 25, Reg. 1-V-10. Commission expires March 30, 1941. (Notarial Seal.)

[fol. 792] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT ON MOTION TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY—
Filed April 6, 1940

Motion to dismiss application to become a party for a limited purpose.

In the anti-trust suit of United States v. Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, a consent decree was entered by this court January 29, 1936. The closing paragraph of the decree provides:

“ . . . that Panhandle Eastern, [Panhandle Eastern Pipe Line Company] upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof.”

The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a “proper application” to become a party to this suit. March 23, 1940, a document in the form of an unverified application to become a party was filed. This document is signed “Panhandle Eastern Pipe Line Company By Arthur G. Logan”. Immediately below this signature appear “Arthur G. Logan, Logan & Duffy, Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware”. Below and to the left of these signatures the following names of counsel are typed: “Russell Hardy”, “Robert J. Bulkley”, “Arthur G. Logan”.

The propriety of the application to become a party turns upon the terms of the consent decree. By Section III of that

decree Gano Dunn was appointed Trustee for the purposes and with the powers and duties set forth in that section. The decree further provides:

[fol. 793] "That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; *Provided*, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;"

The business of a corporation is conducted by its board of directors and officers. The control of Panhandle Eastern was vested in the Trustee. He was one of the directors. He shared with Columbia Oil in the selection of the others. He was empowered to remove any of the other directors and replace such directors by others of his own choosing upon his own motion. As the board of directors chose the officers, the Trustee was the final word in the conduct of the busi-

ness of Panhandle Eastern. This control should be borne in mind in construing paragraph (b) of the decree.

[fol. 794] The selection of Gano Dunn as Trustee was made by the Attorney General of the United States as the person best qualified to serve in a very difficult and exacting position from a group of names submitted to him.

Notice of the regular annual stockholders' meeting of Panhandle Eastern to be held March 11, 1940 was duly sent to stockholders. It notified them that the proposed business to be considered at the meeting would be the election of directors for the ensuing year, an amendment of the certificate of incorporation, and such other business as might properly come before the meeting.

Mindful of paragraph (b) of Section III of the decree, Gano Dunn obtained from the executive head of Columbia Oil, the beneficial owner of the stock of Panhandle Eastern held by him, directions as to voting said stock at the annual meeting. March 5, 1940, Don M. Wilson, a vice president of Columbia Oil and acting president, directed Gano Dunn to vote the shares of stock held by him in favor of the amendment to the articles of incorporation proposed by the Board, and as to other matters, excepting the election of directors, to vote said shares "as, in his discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which he had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation". March 8, 1940, the board of directors of Columbia Oil adopted a resolution expressly approving said directions [fol. 795] and also approving a letter from Wilson to Dunn containing the following directions:

"DEAR MR. DUNN:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower, 165 Broadway, New York City
Joe D. Creveling, 90 Broad Street, New York City

Gano Dunn, 80 Broad Street, New York City
 Walter G. Mortland, 37 East 64th St., New York City
 Richard C. Patterson, Jr., 1270 Sixth Avenue, New York City
 Robert C. Winmill, 1 Wall Street, New York City.
 Very truly yours, (Signed) D. M. Wilson, Vice President."

Before determining upon the six directors named in the above letter, Columbia Oil in conference with Dunn recommended certain persons as directors and from among the number so recommended Dunn selected the six above named as the six of the nine directors of Panhandle Eastern which the stock beneficially owned by Columbia Oil was entitled to elect.

From the foregoing, it appears that Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directions from Columbia Oil that could have been anticipated in the normal course of human events.

March 11, 1940, at the opening of the annual stockholders' meeting, Creveling, President of Panhandle Eastern, took the Chair and called the meeting to order as provided in the by-laws. The Chairman announced the presence of a quorum. Thereupon, Logan, who appeared as a stock-[fol. 796] holder, moved that Dixon, an associate of Maguire, be made Chairman of the meeting "from this time forward". Creveling declared the motion out of order. Thereupon, Logan took an appeal from the ruling of the Chairman. A vote was taken. Gano Dunn voted to uphold the Chair while Logan and his associates voted the contrary. Creveling announced that his ruling had been upheld.

Shortly thereafter, Logan moved that Article 11 of the by-laws be amended to read:

"The property and business of this corporation shall be managed by its board of directors, consisting of 14 persons."

This drastic action of increasing the number of directors from 9 to 14 was proposed without notice thereof, and evidently with the intent to acquire control of a large and valuable property. The Chairman declared the motion out

of order in view of Article 42 of the by-laws, providing that the by-laws may be altered or amended "if notice of the proposed alteration or amendment be contained in the notice of the meeting." An appeal was taken with the same result as in preceding instances.

Motions were made that the Class B stock be not allowed to vote; that officers of the company be chosen by the stockholders; that their salaries be fixed by the stockholders; that Maguire be made president and Tringham treasurer of the company. These motions were disposed of as the others had been. In each instance Dunn voted the majority of the voting stock against the motions, and Logan and his associates voted for the motions.

[fol. 797] Hand moved that Panhandle Eastern become a party to the suit of Missouri-Kansas Pipe Line Company and Dammann against the Columbia companies. This motion was similarly disposed of. Hand further moved that the Class A stock of Panhandle Eastern be redeemed. This motion met the same fate.

The following motion concisely states the position of Logan and his associates throughout the meeting:

"Mr. President, I now move that this corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil and Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers."

Later Hand moved that Panhandle Eastern be directed to bring six suits as suggested in a letter of January 15, 1940 from Missouri-Kansas Pipe Line Company to Panhandle Eastern. The fourth item of this letter was an instruction that Panhandle Eastern intervene in this anti-trust suit by the United States pending in this court. At this meeting a resolution was offered by Hand that Panhandle Eastern be directed to make the present application. Gano Dunn, holding a majority of the voting stock of Panhandle Eastern, voted against the resolution and it was accordingly defeated.

It was further moved:

"That this corporation will employ Robert J. Bulkley of Cleveland, Ohio, Russell Hardy of Washington, D. C.,

and Arthur Logan of Wilmington, Delaware, as its attorneys to take action provided for herein;" and further, "that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services".

[fol. 798] Thereafter, the meeting adjourned, although as to adjournment Logan objected that Gano Dunn was not qualified to vote without producing before the meeting specific instructions from Columbia Oil.

After adjournment Logan and his associates held a meeting of their own. No quorum was present. Holders of a minority of the stock of Panhandle Eastern, either in person or by proxy, were the only persons present. The motions of Logan and of his associates, defeated at the regular meeting, were resubmitted at the subsequent meeting, and purported to be passed.

March 20, 1940, a special meeting of the Board of Directors of Columbia Oil was held. The Chairman stated that he had received an official stenographic transcript of the proceedings of the annual meeting of stockholders of Panhandle Eastern of March 11, 1940. Upon consideration of those minutes and of the manner in which Gano Dunn, Trustee, had voted the stock in Panhandle Eastern, it was resolved:

"That all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said stockholders' meeting be and the same hereby are in all respects approved, ratified and confirmed".

In construing the language of the consent decree, I find that the votes cast by Gano Dunn were authorized by the powers conferred upon him by the consent decree and that his votes were well within the directions given to him by Columbia Oil. From this finding, it follows that the so-called application filed in this proceeding was not authorized by Panhandle Eastern or by any responsible body having control of said corporation.

[fol. 799] The motion to dismiss the alleged application of Panhandle Eastern for leave to become a party hereto and for other relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.

2. The attorneys whose names appear on said application as attorneys for Panhandle Eastern were not authorized by that company to act in its behalf in filing such application.

3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the annual meeting of March 11, 1940, in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil.

And order may be submitted.

(Sgd.) John P. Nields, J.

April 6, 1940.

[Vol. 800] IN UNITED STATES DISTRICT COURT

APPLICATION OF MISSOURI-KANSAS PIPE LINE COMPANY IN BEHALF OF PANHANDLE EASTERN PIPE LINE COMPANY FOR RELIEF TO WHICH SAID COMPANY IS ENTITLED UNDER SECTIONS IV AND V OF THE DECREE FILED HEREIN JANUARY 29, 1936—Filed April 16, 1940

Missouri-Kansas Pipe Line Company, on its own behalf as a stockholder and on behalf of all other stockholders similarly situated of Panhandle Eastern Pipe Line Company, makes this application in behalf of and in the name of the latter company for relief to which the latter company is entitled under Sections IV and V of the Decree filed herein January 29, 1936, and respectfully shows to this Court and alleges:

I. Panhandle Eastern Pipe Line Company above mentioned (hereinafter called "Panhandle Eastern") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of Delaware and is referred to in the Decree filed herein January 29, 1936.

Missouri-Kansas Pipe Line Company above mentioned (hereinafter called "Mokan") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of Delaware, and at all times hereinafter mentioned has owned, and now owns, a large part, of the common stock of Panhandle Eastern.

Michigan Gas Transmission Corporation hereinafter mentioned (hereinafter called "Michigan Gas") since on

or about January 31, 1936 has been and now is a corporation organized and existing under the laws of Delaware.

[fol. 801] II. Moka is a stockholder of Panhandle Eastern and has been a holder of stock in said corporation during part or all of the time of the transactions referred to herein. Moka is the owner and holder of 339,275 shares of the common stock of Panhandle Eastern of which 324,326 shares devolved upon it by operation of law. This application is not a collusive one to confer on a Court of the United States jurisdiction of any action or in any respect of which it would not otherwise have had jurisdiction. Moka has sought to have Panhandle Eastern and the directors and stockholders of Panhandle Eastern bring or cause to be brought an action or actions for the relief prayed for herein, but said directors, stockholders and Panhandle Eastern have wrongfully and wilfully neglected and refused to enforce the rights asserted herein as is more particularly set forth hereinafter.

III. On March 6, 1935, the above named plaintiff, United States of America (hereinafter called "United States"), commenced this suit in equity against the defendants herein by filing a Petition herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust Laws of the United States.

IV. Thereafter on October 30, 1935, United States filed and Amended and Supplemental Petition (hereinafter called "Amended Petition"), reference to which is hereby made as if herein fully and at length set forth.

[fol. 802] V. Thereafter on January 29, 1936, a stipulation was duly entered into between United States and the defendants herein consenting to the entry of a Decree against said defendants, and on said day a Decree, to which was attached as a part thereof the aforesaid stipulation, was duly made and entered in this Court against all of the defendants herein, reference to which stipulation and Decree is hereby made as if herein fully and at length set forth.

VI. Said Decree provides among other things as follows:

"Section V. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict com-

pliance herewith and the punishment of evasion hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

VII. This application is made in behalf of Panhandle Eastern in accordance with the terms of said Section V in order to make Panhandle Eastern party hereto for the limited purpose of enforcing the rights conferred by Section IV of said Decree.

VIII. Section IV of said Decree is as follows (italics ours):

"That the defendants be and they are hereby *perpetually enjoined* from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual [fol. 803] arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

"That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or *potentially*, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investments; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security of used in connection with any contract, in *any* way prevent the *free* transportation, sale, and distribu-

tion of gas by Panhandle Eastern, then upon application this Court or any Court of competent jurisdiction Panhandle Eastern shall have the right (1) to the *immediate appointment of a trustee to hold such contract rights or property* subject to the purposes and provisions of this decree; (2) to immediate *specific* performance of *any* and *all* contracts with Columbia Gas; and (3) to *immediate* injunction, both temporary and *final*, as well as any other appropriate remedy at law or in equity, including any remedy hereunder."

IX. Prior to the making and entry of the aforesaid Decree, Panhandle Eastern, which was then completely under the control of the defendants herein, had entered into a contract or agreement with The Detroit City Gas Company, hereinafter sometimes referred to as the Detroit Contract, by the terms of which Panhandle Eastern had agreed to supply natural gas to the City of Detroit, Michigan, for a period of 15 years, which contract is the same contract mentioned and described in said Section IV of the Decree herein.

[fol. 804] X. At the time the said Detroit Contract was entered into, as well as at the time the said Decree was made and entered herein, the eastern terminus of the Panhandle Eastern natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana state boundary line, which point is indicated on a map annexed hereto, made a part hereof and marked "Exhibit A". . At said times there was no pipe line connection between the said eastern terminus of the Panhandle Eastern pipe line at Dana, Indiana, and the City of Detroit, Michigan, a distance of more than three hundred miles. Said map shows the Panhandle Eastern pipe line and the Columbia System as they existed prior to the commencement of this suit.

XI. The said Detroit Contract contained, among other things, provision for (a) the construction by Panhandle Eastern of a pipe line extension from the eastern terminus of the then existing Panhandle Eastern pipe line to the City of Detroit, Michigan (hereinafter sometimes referred to as the "Detroit extension"), (b) the reinforcement of the existing pipe line, and (c) the financing of said con-

struction and reinforcement, in terms and words as follows:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe-line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcement [fol. 805] without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line, and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

XII. Because of the existence of said contract, and contemplating the construction of said extension, said Decree filed herein January 29, 1936 (paragraph IV) provided for alternate methods of financing, and further provided that if the Detroit extension and the necessary reinforcement to the main line of Panhandle Eastern were constructed with financial assistance secured from Columbia Gas, such

"financial assistance (must be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment;"

XIII. Notwithstanding said Decree and the further provision therein contained that the defendants were perpetually enjoined from acquiring, directly or indirectly, the whole or any part of the property or assets of Panhandle Eastern, two days after the entry of said Decree, namely, on January 31, 1936, defendant Columbia Gas, for its own benefit and use, directly acquired from Panhandle Eastern [fol. 806] that part of the contract under which Panhandle Eastern owned the right to construct, own and operate the extension from the eastern terminus of the Panhandle Eastern line to the City of Detroit, and by means of its complete control of the Board of Directors of Panhandle Eastern caused the necessary corporate action to be taken to permit such acquisition. Said corporate action was taken before Gano Dunn, Trustee appointed by and under said Decree herein had qualified and taken office and before Mogan was represented on the Board of Panhandle Eastern, and was taken at directors' meeting superintended by Charles A. Munroe, one of the defendants herein. Through its wholly owned subsidiary Michigan Gas, Columbia Gas has constructed and now owns and operates said extension, and has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the decree aforesaid.

XIV. By reason of its ownership and operation of said Detroit extension, Columbia Gas has been enabled to take over, dominate and control the markets available to said Detroit extension in Indiana and southeastern Michigan (except the City of Detroit), and to restrain trade and commerce in natural gas by Panhandle Eastern in the said markets and in the Ohio markets of the Columbia companies adjacent to said extension. The map which is hereto annexed and marked "Exhibit B" shows the territory in and about the State of Indiana with the pipe lines of Panhandle Eastern and of the Columbia System as they existed prior to the commencement of this suit. The annexed map which is marked "Exhibit C" shows the same territory and the [fol. 807] said lines as they existed on January 29, 1936, the date of the above mentioned Decree herein. The annexed map which is marked "Exhibit D" shows the location of the said Detroit extension, together with various laterals therefrom which Columbia Gas has constructed to connect with existing artificial and mixed gas lines which are also

shown on said map, such extension of the Columbia System having occurred since the entry of said Decree herein and in order that Columbia Gas might control the markets in the aforesaid territory and enlarge its monopoly so as to include said Indiana and Michigan territory, and to restrain trade and commerce by Panhandle Eastern therein. The City of Toledo, in the State of Ohio, is twelve miles east of the Detroit extension as shown on said map, and is served by Columbia Gas from its Ohio system. By owning and operating said Detroit extension, Columbia Gas has prevented Panhandle Eastern from competing in the Toledo market, as well as in the other markets in the territory available to said extension, and to restrain trade and commerce by Panhandle Eastern therein and has prevented Panhandle Eastern from freely transporting, selling and distributing gas within said territory. Under the terms of a contract between Michigan Gas and Panhandle Eastern, approved by said Gano Dunn as Trustee under said Decree herein, and by the Columbia Gas-dominated Board of Panhandle Eastern, allocation is made of the price received from the City of Detroit so that an unfair and unreasonable part thereof is paid to and retained by Michigan Gas, all to the detriment of Panhandle Eastern, its stockholders, and the public.

[fol. 808] XV. In addition to the moneys required for the construction of the aforesaid extension, Panhandle Eastern required, for the fulfilment of said Detroit contract, further moneys for the reinforcement of its own line. The above mentioned Decree herein expressly provided that if such financial assistance were procured from Columbia Gas, it must be furnished, as hereinabove set forth, only upon terms which did not (*italics ours*)

“in *any* way directly or *indirectly*, presently or *potentially* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern.”

Columbia Gas violated said express provision by causing its controlled affiliate, Columbia Oil, to acquire an additional 80,000 shares of the common stock of Panhandle Eastern shortly after the entry of the said Decree with moneys advanced by Columbia Gas, namely, the sum of \$2,000,000, which Columbia Gas advanced to Columbia Oil for the express purpose of enabling the latter to make such payment

and to acquire such stock. Said funds when received by Panhandle Eastern were used by it for the said reinforcement of its said line. Such purchase of additional stock gave to Columbia Oil a majority of the common stock of Panhandle Eastern then outstanding, and Columbia Oil still owns such majority, and still owes Columbia Gas said \$2,000,000.

While Columbia Oil was and is permitted, under said Decree of this Court to acquire stock in Panhandle Eastern, such permission was made expressly subject to the further terms of said Decree, including the injunction against acquisition by Columbia Gas of any interest in Panhandle [fol. 809] Eastern. The device herein set out was intended to evade the restraint imposed on Columbia Gas by said Decree, and to enable Columbia Gas to acquire an indirect or a potential interest in stock of Panhandle Eastern having voting rights; and substantial control thereof, all in violation of the express terms of said Decree. At all times since the entry of said Decree the Board of Directors of Panhandle Eastern has been composed of nine persons and since at least the annual meeting of March of 1937, five of said nine have been nominees of Columbia Oil. Said five nominees of Columbia Oil and Gano Dunn, the Trustee aforesaid, have at all times done the bidding of Columbia Oil and Columbia Gas and have at no time taken any steps which would have been for the best interest of Panhandle Eastern if in doing so the interest of Columbia Gas or any of its associates or affiliates would have been injured.

XVI. Columbia Oil was initially organized by Columbia Gas for the purpose of holding certain of the properties and securities of Columbia Gas. The original Board of Directors of Columbia Oil were selected by Columbia Gas and its officers and directors. The management thus put in charge of Columbia Oil by Columbia Gas at its inception has perpetuated itself in control of Columbia Oil at all times since its organization through the solicitation of management proxies and the use of said proxies to continue the same management in office. This has been rendered possible by virtue of the fact that a majority of the stockholders of Columbia Oil are stockholders of Columbia Gas, and the officers of Columbia Oil have been stockholders of [fol. 810] both Columbia Oil and Columbia Gas practically from the organization of Columbia Oil. At the 1939 Annual

stockholders' meeting of Columbia Oil the management proxy committee cast a vote for the same management which consisted of 99.9% of the total votes cast, of which percentage 82.9% in turn represented stock owned and held by persons who were also stockholders of Columbia Gas. The two corporations have at all times been in effect identical in respect of management and control, and have at all times combined and conspired as hereinafter set forth to restrain trade and commerce in natural gas within the States in which Columbia Gas operated and operate directly and through subsidiaries. Through the control which Columbia Gas has at all times had over the business and affairs of Columbia Oil, through the perpetuation of the Columbia Gas management in office and the vote by Columbia Gas stockholders as aforesaid, Columbia Gas has been able to have Columbia Oil join with it in the combination and conspiracy hereinafter set forth and has at all times been able to use Columbia Oil, its officers and directors, as agents and instrumentalities of Columbia Gas in said combination and conspiracy to restrain the sale of natural gas in the territories above mentioned and to aid Columbia Gas to monopolize and attempt to monopolize the trade and commerce in natural gas in the territories aforesaid.

XVII. The limitations imposed upon the above mentioned Trustee, Gano Dunn, by the provisions of sub-paragraphs (a) and (b) of Section III of the Decree above mentioned and the willingness of the said Gano Dunn to act as the agent and instrumentality of Columbia Gas and Columbia [fol. 811] Oil have made it impossible for said Trustee to serve in accordance with the purposes of said Decree as an effective insulator against the control theretofore exercised by Columbia Gas, through Columbia Oil, over Panhandle Eastern and at all times since the entry of said decree until the present time, Columbia Gas has exercised control and domination through Columbia Oil over Panhandle Eastern in restraint of trade in natural gas in the territories aforesaid and has thereby protected and strengthened its monopoly in the States of Ohio, Michigan, Indiana and adjoining territories.

XVIII. In anticipation of further financing of Panhandle Eastern for the reinforcements of its line and the construction of said Detroit extension, Columbia Gas and Columbia Oil, in violation of said Section IV of said Decree,

undertook to and did cause to be issued to Columbia Oil the following shares of preferred stock of Panhandle Eastern:

(1) 100,000 shares of Class A, \$6. accumulative and participating preferred stock having a par value of \$100. per share, each of said shares having voting rights share for share with the common stock on all matters excepting the election of directors.

(2) 10,000 shares Class B, \$6. preferred stock, of the par value of \$100 per share. This preferred stock is entitled to vote share for share with the common, and in addition thereto is entitled, as a class, to elect two directors of Panhandle Eastern. Said 10,000 shares was created and issued to Columbia Oil pursuant to the provisions of a settlement agreement entered into between the Columbia Gas and Columbia Oil and Receivers of Mokon. In the negotiations leading up to said settlement agreement, officers of Columbia Gas stated that they would not make a settlement with the Mokon Receivers of claims which said Mokon Receivers then had against the Columbia Gas and Columbia Oil, unless said Mokon Receivers would agree that said issue of Class B preferred stock be created and issued to Columbia Oil and be non-redeemable and non-callable and containing the provision that it should have [fol. 812] the right to elect two directors of Panhandle Eastern. Said officers of Columbia Gas on its behalf stated that neither they nor Columbia Gas would agree to any settlement with said Receivers of Mokon unless Columbia Gas and Columbia Oil were given control on the Board of Panhandle Eastern. Said negotiations were had and said statements made after the entry of said Decree aforesaid and were directly contrary to the terms and provisions of said Decree.

XIX. The said 80,000 shares of common stock of Panhandle Eastern, when so acquired by the Defendants herein, and also said two classes of preferred stock, namely, 100,000 shares of Class A and 10,000 shares of Class B, were turned over to, and legal title thereto is now held by said Gano Dunn as Trustee under said Decree.

XX. After Columbia Gas and Columbia Oil had procured the ownership of the aforesaid Detroit extension and additional common stock of Panhandle Eastern as above de-

scribed, Columbia Gas and Columbia Oil thereupon, in further violation of the express terms of said Decree, and through the use of said Detroit extension acquired from Panhandle Eastern as aforesaid, contrived to and did effect arrangements with Panhandle Eastern for the transportation of gas through the Detroit extension, so as to secure to themselves a further monopoly in the commerce of natural gas in Indiana, Ohio and Michigan, and to restrain trade and commerce by Panhandle Eastern therein, by causing Panhandle Eastern to enter into an agreement of March 17, 1936 with the Michigan Gas, the wholly-owned subsidiary of Columbia Gas, which provided in part as follows (Panhandle Eastern is referred to as "Eastern", and Michigan Gas Transmission Corporation as "Michigan") (italics ours):

[fol. 813] "4. *If at any time in the future*, while this Agreement remains in force, *Eastern has additional natural gas which is available* for ultimate distribution in the territory then reached by the pipe lines of Michigan, then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, the Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and Eastern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis

(whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern."

XXI. The purpose, intent and effect of the contract, from which the foregoing provision is quoted, was to enable Columbia Gas to contract with the various municipalities and distribution systems located along said extension in Indiana, Ohio and Michigan for the sale by Columbia Gas [fol. 814] of Panhandle Eastern's gas to such communities at prices and on terms satisfactory to Columbia Gas and to enable Columbia Gas further to dominate and control the sale of natural gas in the States of Ohio, Indiana and Michigan and to restrain trade and commerce by Panhandle Eastern therein. Columbia Gas at the time of the making of said contract controlled the executive management of Panhandle Eastern and well knew that the gas reserves of Panhandle Eastern were more than adequate to supply the total capacity of Panhandle Eastern's pipe line and that there would be at all times "additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan (Gas)", and intended thus to contrive and did contrive that Columbia Gas should have control of any gas of Panhandle Eastern that was available for ultimate distribution in the territory that might be then reached by the pipe lines of Michigan Gas and to exact for itself an unreasonable and unfair price for such gas, in order that the price structure of the Columbia System in Indiana and Michigan and more particularly in Ohio, should not be affected. The defendants herein (except Hillman) have agreed between themselves and with the management of Panhandle Eastern that the contracts between Panhandle Eastern and Michigan Gas should be

construed so as not to permit Panhandle Eastern to sell gas for industrial use directly in the territory reached by the line of Michigan Gas or to require the line of Michigan Gas to carry the same, with the result that Panhandle [fol. 815] Eastern has been prevented from offering gas for industrial use in Indiana, Ohio and Michigan, particularly in the Toledo area, although it could have sold great quantities of the same.

XXII. On or about January 15, 1940 and at other times heretofore, Mogan as the owner and holder of 339,275 shares of the common stock of Panhandle Eastern made demand upon Panhandle Eastern and the officers and directors thereof including Gano Dunn above mentioned that this or a like application be made by Panhandle Eastern for relief to which Panhandle Eastern is entitled under Sections IV and V of said Decree, but Panhandle Eastern, its officers and directors, have neglected and refused and still neglect and refuse to take any action whatsoever. The reason Panhandle Eastern, its officers and directors have not taken action is that said Board is controlled by said Gano Dunn and five nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas as aforesaid to the great loss and damage of Panhandle Eastern. At the annual meeting of stockholders of Panhandle Eastern held on March 11, 1939, resolutions were proposed that Panhandle Eastern take the action which Mogan had demanded on January 15, 1940, including filing an application in its own name as Mogan is doing on its behalf by this application. Said resolutions, after being seconded, received the affirmative vote of persons and proxies totalling 373,600 shares of the common stock of [fol. 816] Panhandle Eastern Pipe Line Company. All stockholders and proxies present at such meeting voted for said resolutions, except the management proxy, who represented 5,380 shares, and Harold B. Howard, proxy for 109 shares, neither of whom voted on the resolutions, and Gano Dunn, the Trustee for Columbia Oil under the terms and conditions of the Consent Decree entered herein on January 29, 1936, who voted against the resolutions; whereupon, the Chairman declared that the same had been defeated. The said Gano Dunn so voted pursuant to general instructions from Columbia Oil & Gasoline Corporation.

Wherefore, it is prayed that the relief to which Panhandle Eastern is entitled under Sections IV and V of the Decree filed herein January 29, 1936 be granted viz

(1) That leave be granted to file this application on behalf of Panhandle Eastern in accordance with the terms of said Section V and to become a party hereto for the limited purpose of enforcing the rights conferred by Section IV of said Decree.

(2) That a trustee be appointed to hold all the stock of Michigan Gas and all interest of Columbia Gas in said Company, and that Columbia Gas be ordered to turn over such stock and interests to such trustee to be held by him for the benefit of the Panhandle Eastern, subject only to repayment to Columbia Gas of sums actually advanced by it for the purpose of construction of the aforesaid pipe line, less any dividends and all other moneys received directly or indirectly by Columbia Gas from profits made by said [fol. 817] Michigan Gas and provided any balance due to Columbia Gas shall be a first charge on the assets and earnings of the trust estate.

(3) That the Trustee herein, Gano Dunn, be directed forthwith to deliver up and surrender to Panhandle Eastern 80,000 shares of its capital stock received as mentioned in paragraph XIX hereunder, and that the defendants Columbia Oil and Columbia Gas be directed to receive in lieu thereof a security which does not in any way directly or indirectly, presently or potentially, confer on Columbia Gas any voting rights, control or participation in the management of, Panhandle Eastern.

(4) That said Trustee, Gano Dunn, be directed to vote the common stock and the 100,000 shares of Class A preferred stock and the 10,000 shares of Class B preferred stock of Panhandle Eastern so that the provisions of such preferred stock may be suitably amended to eliminate any and all right of the holders thereof to vote on any matter whatever, including the election of directors.

(5) That United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, George H. Howard, Phillip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay, John H. Hillman, Jr. and

Panhandle Eastern be cited to appear before the court, upon a day to be named by the court, there to show cause why an order should not be made granting the relief prayed for herein.

(6) For such other and further relief as to the court may [fol. 818] seem appropriate under the provisions of said Section IV of said Decree.

And it will be forever prayed, &c..

Missouri-Kansas Pipe Line Company, by (Sgd.) W. C. Tringham, Treasurer. (Corporate Seal.)

Attest: (Sgd.) W. C. Tringham, Secretary.

On its own behalf as a stockholder and on behalf of all other stockholders similarly situated of Panhandle Eastern Pipe Line Company, making this application in behalf of Panhandle Eastern Pipe Line Company for relief to which Panhandle Eastern Pipe Line Company is entitled under Sections IV and V of the Decree filed herein January 29, 1936.

(Sgd.) Arthur G. Logan, (Sgd.) Logan and Duffy, Attorneys for Missouri-Kansas Pipe Line Company.

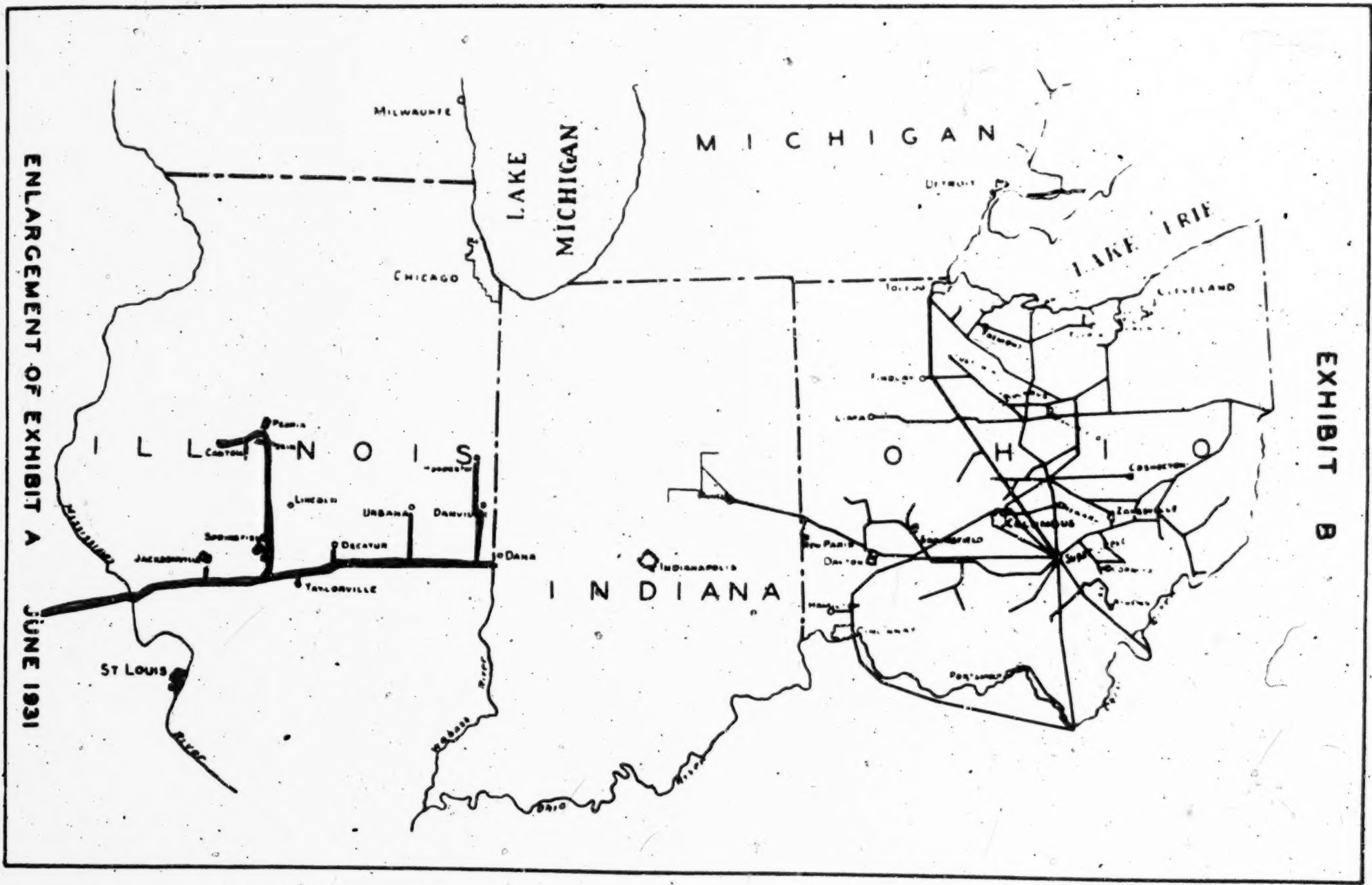
Russell Hardy, 729 Fifteenth Street, Washington, D. C., Robert J. Bulkley, Bulkley Building, Cleveland, Ohio, Arthur G. Logan, 303 Delaware Trust Building, Wilmington, Delaware, Of Counsel.

(Here follow 4 photolithographs, side folios 819-822)

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ENLARGEMENT OF EXHIBIT A
JUNE 1931

EXHIBIT B

JANUARY 29 1936

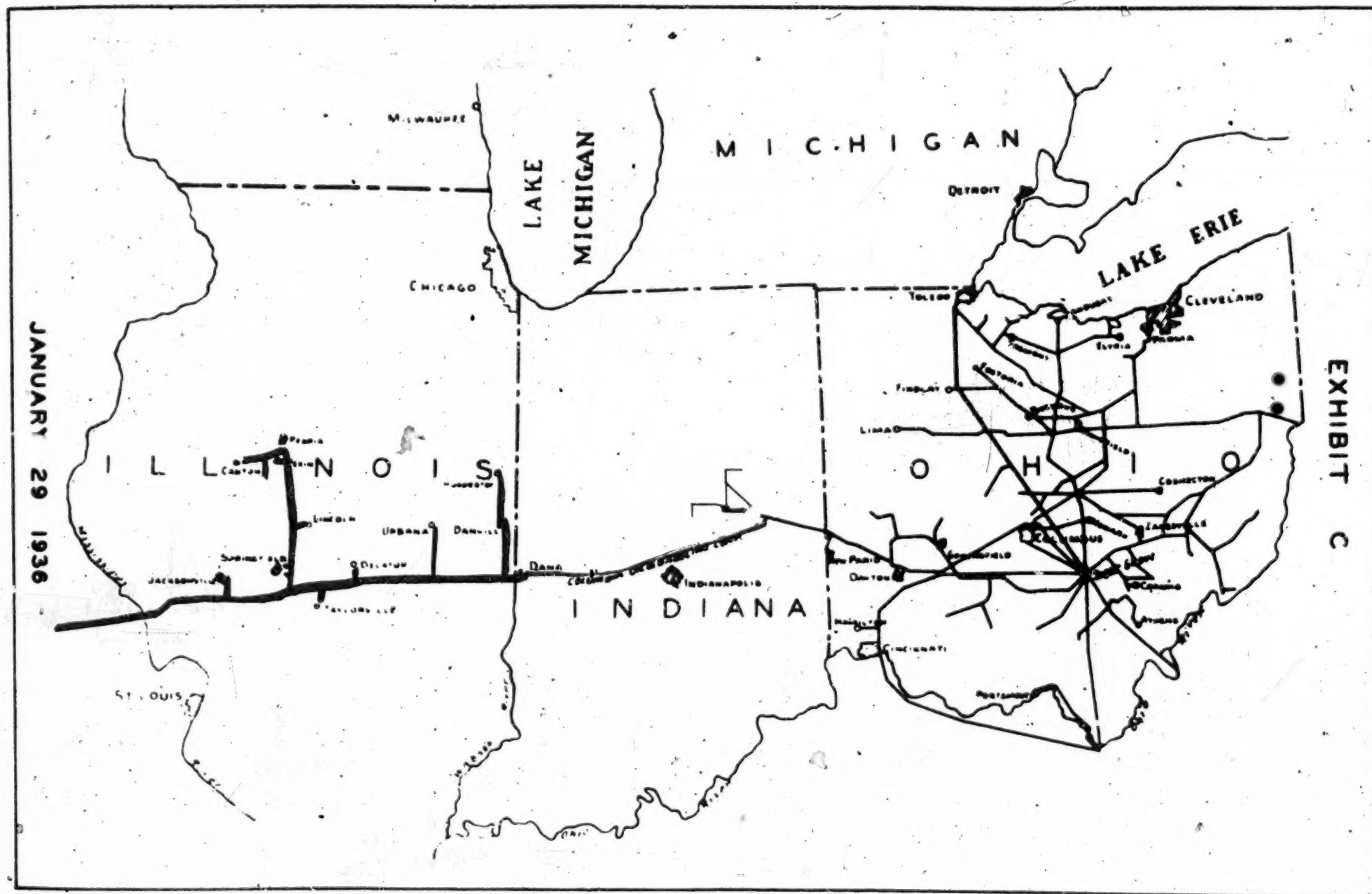
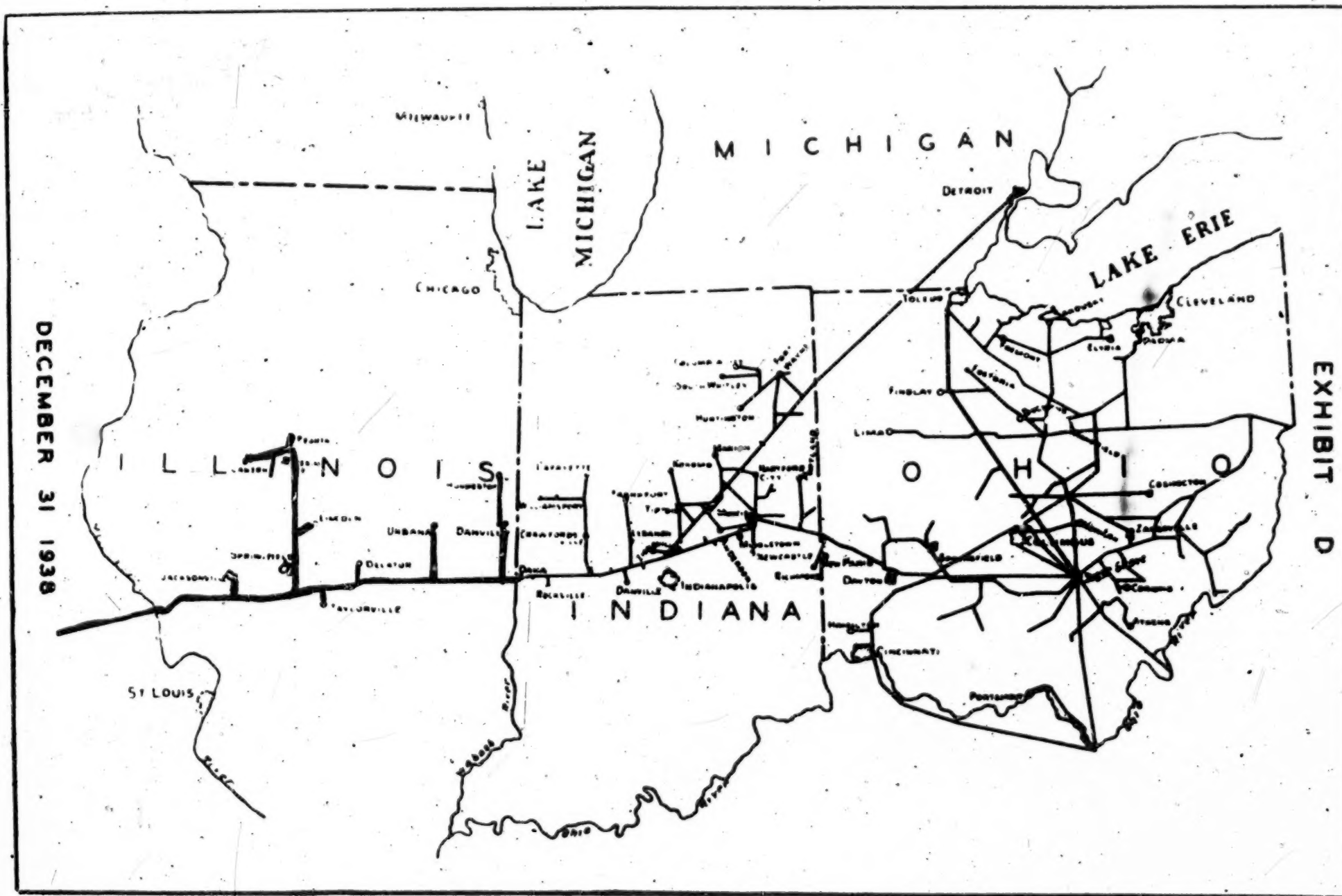


EXHIBIT C



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[fol. 823] *Duly sworn to by W. C. Tringham. Jurat omitted in printing.*

[fol. 824] IN UNITED STATES DISTRICT COURT

ORDER SETTING APPLICATION OF MISSOURI-KANSAS PIPE LINE
COMPANY FOR HEARING—Filed April 16, 1940

And now, to-wit this 16th day of April, A. D. 1940, upon reading and considering the application of Missouri-Kansas Pipe Line Company for leave to file its application as a derivative stockholder's application in behalf of Panhandle Eastern Pipe Line Company pursuant to the provisions of Section V of the decree entered herein on the 29th day of January, A. D. 1936, for the limited purpose of enforcing the rights conferred upon Panhandle Eastern Pipe Line Company by Section IV thereof, it is, upon motion of Arthur G. Logan, Esq., attorney for said Missouri-Kansas Pipe Line Company,

Ordered by the Court that said application be and hereby is set down for hearing before this court at the United States Court Room in the City of Wilmington in said district on the 23d day of April, A. D. 1940, at ten o'clock in the forenoon, at which time and place any party in interest may appear and show cause, if any they have, why said application should not be granted.

It is further ordered by the Court that notice of the time and place of said hearing be forthwith given to the other parties to this cause, and to that end that a copy of said application and of this order be forthwith served upon said other parties or their attorneys of record.

(Sgd.) John P. Nields, J.

[fol. 825] IN UNITED STATES DISTRICT COURT

ORDER DENYING APPLICATION OF MISSOURI-KANSAS PIPE LINE
COMPANY TO INTERVENE—Filed April 23, 1940

And now, to-wit, this 23d day of April, A. D. 1940, the above entitled cause having come on to be heard upon the application of Missouri-Kansas Pipe Line Company in behalf of Panhandle Eastern Pipe Line Company for certain relief under the decree of this Court of January 29,

1936, and the said application having been fully argued by counsel, and upon consideration thereof by the Court it is

Ordered by the Court that the said application be and it is hereby denied.

(sgd.) John P. Nields, J.

[fol. 826] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed June 14, 1940

Missouri-Kansas Pipe Line Company, petitioner, considering itself aggrieved by the decree made and entered on the 23rd day of April, 1940, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, and in support of this, its petition for appeal, shows unto the Court:

The action in this Court was brought by the United States under the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation and certain individuals to enjoin them from continuing to engage in a conspiracy in restraint of trade and commerce among the states in natural gas, from exercising any dominion or control over Panhandle Eastern Pipe Line Company, and from further restraining or interfering in any manner with the free and independent action of Panhandle Eastern Pipe Line Company in the production, transportation, or sale and delivery of natural gas. Said action also sought to dissolve the restraint and monopoly by causing Columbia Oil and Gasoline Corporation to divest itself [fol. 827] of all stock and bonds of Panhandle Eastern Pipe Line Company. The action was begun by the United States filing its petition on March 26, 1935. On October 30, 1935, the United States filed an amended and supplemental petition. Said amended and supplemental petition sets forth the following facts:

(a) The defendant Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas") was and is extensively engaged in trade and commerce among the

States in natural gas through subsidiaries and affiliates, and as stated in the petition, "Its greatest concentration of operations is in the State of Ohio, in a large portion of which State it has for many years past enjoyed a virtual monopoly in the sales and distribution of natural mixed and artificial gas." (Par. 15.)

(b) The defendant Columbia Oil & Gas Corporation (hereinafter referred to as "Columbia Oil") was organized by Columbia Gas to hold the oil, gasoline, and gas-producing properties of the so-called Columbia System. That is to say, the subsidiaries and affiliates of Columbia Gas above mentioned. (Par. 14.)

(c) Missouri-Kansas Pipe Line Company, the petitioner herein, (hereinafter referred to as "Mokan") was organized for the purpose of producing, transporting, distributing, and selling natural gas. It caused the organization of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and became the owner of the entire capital stock of said corporation. Panhandle Eastern was organized for the purpose of building and [fol. 828] operating a natural gas pipe line from the gas-producing territories of the Texas Panhandle and Kansas, through the States of Oklahoma, Kansas, Missouri, Illinois, and Indiana, up to the City of Indianapolis with extensions to the Cities of Detroit, Michigan and Dayton and Cincinnati, Ohio. (Par. 16.)

(d) The defendants engaged in a combination and a conspiracy in June, 1930, to restrain and monopolize trade and commerce among the States in natural gas, particularly in the States of Indiana, Michigan and Ohio in violation of the anti-trust laws. The purpose of the defendants was to prevent Panhandle Eastern from making available, either directly or indirectly, its very large supplies of natural gas in such manner as to compete with the Columbia System or endanger its monopolization of the distribution and sale of natural gas in the States of Michigan and Ohio, and, among other things, to bring Mokan and Panhandle Eastern to such a financial condition that the defendants would be enabled to acquire the complete domination and ownership of Panhandle Eastern's physical assets and properties. (Par. 17.)

(e) The defendants Columbia Oil and Columbia Gas were about to and did acquire 50 per cent of the common stock

of Panhandle Eastern and all of its outstanding debt. (Pars. 18 and 22.)

(f) Said defendants also obtained control of the Board of Directors and management of Panhandle Eastern. (Par. 23.)

(g) Moka retained 50 per cent of the common stock of Panhandle Eastern, but in order to maintain said 50 per [fol. 829] cent interest, was required to advance approximately \$5,000,000. In order to raise said amount, Moka pledged its 50 per cent of the common stock of Panhandle Eastern. (Par. 24.)

(h) Thereafter, the defendants, through their control over Panhandle Eastern, prevented it from selling natural gas, and thus it had no earnings sufficient to make interest or dividend payments to Moka which would have enabled Moka to pay the interest on its debt. (Pars. 26 to 29.)

(i) Moka was thereupon forced into receivership. (Par. 27.)

(j) Columbia Oil thereafter acquired control of substantially all of Moka's 50 per cent interest in the common stock of Panhandle Eastern, thus giving the Columbia Companies control of Panhandle Eastern free from Moka's minority interest. (Pars. 29 to 32.)

(k) Defendants were, at the time the petition was filed, engaged in other acts and transactions which would have given them 100 per cent ownership of the common stock of Panhandle Eastern. (Par. 31.)

On January 29, 1936, a stipulation was entered into between the parties to said action and a consent decree was entered thereon the same day.

The stipulation provided, inter alia:

"The defendant Columbia Oil agrees to make, within 48 hours of the entry of the attached decree, a bona fide offer in writing to the Receivers of Missouri-Kansas Pipe Line Company, appointed by the Delaware Chancery Court, providing among other things for the settlement of the claims of the Receivers asserted against the defendants herein and the acquisition by the Receivers of a direct interest in the stock of Panhandle Eastern Pipe Line Company, to the [fol. 830] extent of one-half of the initial amount of com-

mon stock of Panhandle Eastern Pipe Line Company to be outstanding after a recapitalization thereof, * * *

Pursuant to the provisions in the stipulation, an offer of settlement was made to the Receivers of Missouri-Kansas Pipe Line Company whereby they reacquired a direct interest in the stock of Panhandle Eastern Pipe Line Company. At present, the interest of Missouri-Kansas is approximately 42% of the common stock in said Company.

The consent decree provided for the appointment of a trustee to hold the Panhandle Eastern stock of Columbia Oil and to vote it for directors recommended by Columbia Oil.

The consent decree provided further:

"IV

That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia [fol. 831] Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any

way prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder.

V

That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

On December 21, 1938, the United States moved for leave to serve a supplemental complaint. The motion was granted and a supplemental complaint filed January 12, 1939. In and by this supplemental complaint, the United States pointed out that there was, "Necessity for further action by this Court to achieve the purposes of the decree" (i. e. Consent Decree). This supplemental complaint then alleged:

"(a) In the period of almost three years which has elapsed since the entry of the decree of January 29, 1936, no steps of any kind have been taken toward the effective termination of all control by Columbia Gas of Panhandle Eastern, * * *. The Course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require all stock of Panhandle Eastern, as contemplated by the last paragraph of Section III of said decree, and (2) that to accomplish the purpose of

said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to [fol. 832] this Court for approval of a suitable plan or plans to accomplish such divestiture."

Said supplemental complaint prayed, among other things, for a divestiture either by Columbia Gas of its Columbia Oil holdings or by Columbia Oil of its Panhandle Eastern holdings.

Thereafter, on May 15, 1939, the United States moved for leave to withdraw said supplemental complaint of January 21, 1938, to vacate the consent decree of January 29, 1936, and to file an amended and supplemental complaint. Annexed to said motion is a copy of the proposed amended and supplemental bill of complaint. In and by this amended and supplemental complaint, the Government alleges that the Columbia Companies have continued at all times since the entry of the consent decree to violate the anti-trust laws, among other things, by continuing to exercise dominion and control over Panhandle Eastern notwithstanding the terms of said decree. Prayers "F" and "G" of said complaint specifically are that:

"F. The defendant Columbia Oil shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Panhandle Eastern.

G. The defendant Columbia Gas shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Michigan Gas Transmission Company."

No proceedings have been had by the Court on said motion.

Instead, thereafter, on June 20, 1939, the defendants proposed that the consent decree be modified, and offered a plan purporting to end the restraint and monopoly.

Three weeks after the United States filed its supplemental complaint on December 21, 1939, as aforesaid, Mogan filed a motion for leave to intervene in the cause. This [fol. 833] motion was denied. On June 5, 1939, after the United States had filed its motion to file an amended and supplemental complaint, Mogan again sought leave to intervene. This was denied. Mogan took appeals from the orders denying it leave to intervene to the United States Cir-

cuit Court of Appeals for the Third Circuit, which appeals were dismissed (110 F. (2d) 15) on the ground that under the provisions of the so-called "Expediting Act", 15 U. S. C. A. Sec. 29 as interpreted by the Supreme Court of the United States in the case of United States vs. California Co-operative Canneries, 279 U. S. 553, 73 L. Ed. 838, appeals to intervene in a cause such as the instant one, wherein the United States is complainant, could only be taken to the Supreme Court of the United States and that there was no jurisdiction in the Circuit Court to entertain the appeals. A petition for writs of certiorari to review said decision of the Circuit Court of Appeals was denied on the 22nd day of April, 1940.

Mokan, as the owner and holder of 339,275 shares of the common stock of Panhandle Eastern, made demand upon Panhandle Eastern and the officers and directors thereof, including the Trustees appointed by the Consent decree, that an application be made by Panhandle Eastern for the relief to which it is entitled under Section IV and V of the consent decree. (i. e. under said above quoted provision that, etc.) But Panhandle Eastern, its officers and directors, neglected and refused to comply with said demand and take said action against the defendants, due to the fact that its board of directors is controlled by the defendants [fol. 834] and nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas. Columbia Oil is the beneficial owner of 404,326 shares of the common stock of Panhandle Eastern, which constitutes in excess of 50% of the total issued and outstanding, and is the beneficial owner of all the issued and outstanding preferred stock of Panhandle Eastern. The stock beneficially owned by Columbia Oil has voting rights sufficient to elect two more than a majority of directors. This stock stands in the name of Gano Dunn as Trustee under the consent decree. He has acted for Columbia Oil in placing their nominees on the Board of Panhandle Eastern and has taken directions from it at all times as to the manner in which the affairs of Panhandle Eastern should be conducted. The application of Mokan states, *inter alia*:

"The reason Panhandle Eastern, its officers and directors have not taken action is that said Board is controlled by said Gano Dunn and five nominees of Columbia Oil who

are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas as aforesaid to the great loss and damage of Panhandle Eastern."

At the annual meeting² of stockholders of Panhandle Eastern held on March 11, 1940, resolutions were proposed that Panhandle Eastern take the action which Moka demanded that it take. The Chairman of the meeting declared the motion defeated, however, when Gano Dunn, the Trustee, voted against it. He so voted pursuant to general instructions from Columbia Oil.

Moka thereupon made application herein in behalf of Panhandle Eastern for the relief to which said company is [fol. 835] entitled under Sections IV and V of the consent decree which are hereinabove set forth. An order was entered on April 23, 1940 denying said application.

As Panhandle Eastern has neglected and refused to make an application in the cause to become a party for the purpose of enforcing the rights conferred upon it by Section IV of the consent decree, which neglect and refusal is occasioned through the domination and control which the Columbia Companies continue to exert over Panhandle Eastern, its officers and directors, and as the rights conferred by Section IV are valuable rights under the decree as aforesaid against the Columbia Companies and those acting with them to prevent Panhandle Eastern Pipe Line Company from engaging freely and independently in trade and commerce among the States in natural gas, the decree of the United States District Court for the District of Delaware, denying Moka leave to intervene and assert these valuable rights on behalf of Panhandle Eastern, constitutes, unless reversed, an effectual deprivation of those rights, including the right to a full and complete enjoyment of the decree.

Petitioner files herein its assignment of errors which specifies the reasons for which it considers itself aggrieved by the decree and order entered herein on April 23, 1940.

Petitioner also files herewith its Jurisdiction Statement.

Wherefore, Petitioner prays that this appeal may be allowed and that a citation issue as provided by law directed to the respondents above named commanding them and each of them to be and appear before the Supreme Court of the [fol. 836] United States to do and receive what may appertain to equity and justice in the premises and that the decree

and order denying the application of Missouri-Kansas Pipe Line Company be reversed.

Dated June 14th, 1940.

Missouri-Kansas Pipe Line Company, by (Sgd.) A. Faison Dixon, Vice President and (Sgd.) Arthur G. Logan, by (Sgd.) Logan and Duffy, 303 Delaware Trust Building, Wilmington, Delaware, Its Attorneys.

Arthur G. Logan, Delaware Trust Building, Wilmington, Delaware, Robert J. Bulkley, Bulkley Building, Cleveland, Ohio, Russell Hardy, 729 Fifteenth Street, N. W., Washington, D. C.

[fol. 837] *Duly sworn to by A. Faison Dixon. Jurat omitted in printing.*

[fol. 838] IN UNITED STATES DISTRICT COURT

MISSOURI-KANSAS PIPE LINE COMPANY'S ASSIGNMENT OF ERRORS—Filed June 14, 1940

Now Comes Missouri-Kansas Pipe Line Company, petitioner in the above-entitled cause, appellant, by its attorneys, and files the following assignment of errors upon which it will rely on its appeal herein to the Supreme Court of the United States:

1. The Court erred in denying the application of Missouri-Kansas Pipe Line Company in behalf of Panhandle Eastern Pipe Line Company for relief under the consent decree of the Court of January 29, 1936.

2. The Court erred in refusing to allow Missouri-Kansas Pipe Line Company to make application in its representative capacity as a minority stockholder of Panhandle Eastern Pipe Line Company to enforce its secondary right to secure for Panhandle Eastern Pipe Line Company the relief to which it is entitled under the provisions of paragraphs IV and V of the consent decree entered by the Court on January 29, 1936.

3. The Court erred in refusing to grant leave to Missouri-Kansas Pipe Line Company to file its application on behalf

of Panhandle Eastern in accordance with the terms of paragraph V of the consent decree and to become a party in the proceedings for the limited purpose of enforcing the rights [fols. 839-843] conferred by paragraph IV of the said consent decree of January 29, 1936.

4. The Court erred in refusing to allow Missouri-Kansas Pipe Line Company to enforce on behalf of Panhandle Eastern Pipe Line Company the rights shown in its application to which Panhandle Eastern Pipe Line Company is entitled under the provisions of paragraphs IV and V of the consent decree entered by the Court on January 29, 1936 in the cause.

Wherefore, the petitioner-appellant prays that the decree of the United States District Court for the District of Delaware entered on April 23, 1940, denying the application of Missouri-Kansas Pipe Line Company, be reversed by the Supreme Court of the United States, and that petitioner-appellant be granted the relief prayed for by it in its application.

(Sgd.) Arthur G. Logan, (Sgd.) Logan and Duffy,
303 Delaware Trust Building, Wilmington, Delaware,
Attorneys for Missouri-Kansas Pipe Line
Company, Petitioner-Appellant.

Robert J. Bulkley, Bulkley Building, Cleveland, Ohio;
Russell Hardy, 729 Fifteenth St., Washington, D. C., Arthur
G. Logan, Delaware Trust Bldg., Wilmington, Delaware,
Of Counsel.

[fols. 844-846] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL BY MISSOURI-KANSAS PIPE LINE
COMPANY—Filed June 14, 1940

And now, to-wit, this 14th day of June, A. D. 1940, the petition for appeal filed by Missouri-Kansas Pipe Line Company, together with the assignments of error, prayer for reversal and statement as to jurisdiction, having been presented to, read and maturely considered by the Court, upon motion of Arthur G. Logan, Esquire, it is, pursuant to the statutes and the Rules of the Supreme Court of the United States in such case made and provided,

Ordered by the Court that an appeal as prayed for in

said petition for appeal of Missouri-Kansas Pipe Line Company be and the same hereby is allowed to the Supreme Court of the United States from the District Court of the United States for the District of Delaware in this cause as provided by law; and

It is further Ordered by the Court that security for costs on appeal be and the same hereby is fixed in the sum of Two hundred fifty dollars (\$250.00); and

It is Further Ordered by the Court that the Clerk of the District Court of the United States for the District of Delaware shall prepare and certify a transcript of the record, proceedings and decree and transmit the same to the Supreme Court of the United States and that he shall have the same in said Court on or before forty (40) days from this date.

(Sgd.) John P. Nields, J.

[fols. 847-848] Citation and service on appeal of Missouri-Kansas Pipe Line Company, Filed June 18, 1940, omitted in printing.

[fol. 849] IN UNITED STATES DISTRICT COURT

PRAECIPE OF MISSOURI-KANSAS PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed June 18, 1940

To the Clerk of the United States District Court for the District of Delaware:

Dear Sir:

You are hereby requested to prepare a transcript of record to be transmitted to the Supreme Court of the United States pursuant to the order allowing an appeal as prayed for by Missouri-Kansas Pipe Line Company, which order was heretofore filed on June 14, 1940, in this cause, and to include therein the following papers:

1. Docket entries.
2. Amended and supplemental petition of the plaintiff filed October 30, 1935.
3. Answer of defendants Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R.

Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed January 29, 1936.

4. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed January 29, 1936.

5. Answer of defendant John H. Hillman, Jr., filed January 29, 1936.

6. Answer of defendant Burt R. Bay, filed January 29, 1936.

[fol. 850] 7. Stipulation and Decree that defendants be enjoined and appointing Gano Dunn as trustee, etc., filed January 29, 1936.

8. Amended and supplemental petition of plaintiff filed January 12, 1939.

9. Motion and attached petition of Missouri-Kansas Pipe Line Company for leave to intervene and order filed February 6, 1939.

10. Answer of John H. Hillman, Jr., defendant, filed February 24, 1939.

11. Opinion of Court filed March 29, 1939.

12. Order denying intervention filed March 30, 1939.

13. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed May 15, 1939.

14. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed May 15, 1939.

15. Motion of plaintiff for leave to withdraw supplemental complaint; filed May 15, 1939.

16. Motion of plaintiff to vacate decree, etc., filed May 15, 1939.

17. Motion and Plan of defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, filed June 20, 1939.

18. Motion and annexed petition of Missouri-Kansas Pipe Line Company for leave to intervene and affidavit of service filed July 5, 1939.

19. Order denying intervention filed July 10, 1939.
[fol. 851] 20. Order of reference of Plan to special master dated July 10, 1939.

21. Opinion of William Prickett, Esq., Special Master, filed July 29, 1939.

22. Summary of plan, findings of fact, conclusions of law and recommendations of Special Master and testimony before him, filed July 29, 1939.

23. Report of William Prickett, Special Master, with papers therein mentioned, filed August 5, 1939.

24. Objections by Missouri-Kansas Pipe Line Company to report of Special Master, filed August 8, 1939.

25. Objections of City of Detroit to report of Special Master, filed August 12, 1939.

26. Application of Panhandle Eastern Pipe Line Company to be made a party, etc., and order setting same down for hearing. Filed March 23, 1940.

27. Motion of Columbia Gas & Electric Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson, filed March 29, 1940.

28. Motion of Columbia Oil & Gasoline Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson, filed March 29, 1940. (Omit exhibits which are on motion of Columbia Gas & Electric Corporation #27.)

[fol. 852] 29. Opinion of Court, filed April 6, 1940.

30. Application of Missouri-Kansas Pipe Line Company to become a party, etc., and order setting same down for hearing. Filed April 16, 1940.

31. Order denying application of Missouri-Kansas Pipe Line Company for leave to become a party, etc., filed April 23, 1940.

32. Petition for Appeal, filed June 14, 1940.

33. Assignments of error, filed June 14, 1940.

34. Jurisdiction Statement, filed June 14, 1940.

35. Motion required by paragraph 2 of Rule 12 of the Rules of the Supreme Court with proof of service of it and papers required by said paragraph 2, of the Rules of the Supreme Court of the United States.

36. Copy of citation with proof of service.

37. Clerk's Certificate.

38. This praecipe with proof of service.

(Sgd.) Arthur G. Logan. Logan & Duffy, 303 Delaware Trust Bldg., Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. C. A. Southerland, Attorney for Columbia Gas & Electric Corporation; George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., and Burt R. Bay. Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and [fol. 853] Charles A. Munroe. C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 854] IN UNITED STATES DISTRICT COURT

AMENDED PRAECIPE OF MISSOURI-KANSAS PIPE LINE COMPANY
FOR TRANSCRIPT OF RECORD ON APPEAL—Filed July 1, 1940

To the Clerk of the United States District Court for the
District of Delaware:

DEAR SIR:

You are hereby requested to amend the praecipe heretofore filed by Missouri-Kansas Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 22 thereof and substitute in lieu thereof the following:

"22. Summary of Plan, Findings of Fact, Conclusions of Law and Recommendations of Special Master, filed July 29, 1939. Do not include testimony before Special Master."

2. Strike out paragraph 23 and substitute in lieu thereof the following:

“23. The Report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith.”

3. Add the following:

“39. Order allowing appeal entered June 14, 1940.”

4. Change the word “motion” in item 35 to “notice”.

5. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Building, Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

[fol. 855] Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gosster, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 856] IN UNITED STATES DISTRICT COURT

AMENDED PRAECIPE OF MISSOURI-KANSAS PIPE LINE COMPANY
FOR TRANSCRIPT OF RECORD ON APPEAL—Filed July 6, 1940

To the Clerk of the United States District Court for the
District of Delaware:

DEAR SIR:

You are hereby requested to further amend the praecipe heretofore filed by Missouri-Kansas Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 23 as amended and substitute in lieu thereof the following:

"23. The Report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith except item #7."

2. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Bldg., Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 857] IN UNITED STATES DISTRICT COURT

COUNTER-PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL BY MISSOURI-KANSAS PIPE LINE COMPANY—Filed June 28, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to include in the Transcript of Record on Appeal by Missouri-Kansas Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe filed by said Missouri-Kansas Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to report of William Prickett, Esq., Special Master, filed in August, 1939.

2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939.

3. Plaintiff's exceptions to the report of William Prickett, Esq., Special Master, filed in August, 1939.

4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939, on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

[fol. 858] 5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan"; filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936, to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof:

Exhibit C—Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation.

Exhibits D and E—Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation approving the financing agreement of January 31, 1936.

Exhibit F—Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935,

between Panhandle Eastern Pipe Line Company and Detroit City Gas Company.

Exhibit G—Letter, dated March 17, 1936, of Gano Dunn to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936.

[fol. 859] Exhibit K—Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E.

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization".

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights".

(c) Extract from minutes of Special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Salaries and Compensation".

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company".

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri- [fol. 860] Kansas Pipe Line Company ordering the postponement of the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the Plan, and the petition on which said order is based.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

June 27, 1940.

[fol. 861] IN UNITED STATES DISTRICT COURT

COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF MISSOURI-KANSAS PIPE LINE COMPANY
—Filed June 28, 1940

To the Clerk of the United States District Court for the

DEAR SIR:

District of Delaware:

You are hereby requested to include in the Transcript of Record on Appeal by Missouri-Kansas Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe filed by the said Missouri-Kansas Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item 1 of Counter Praecipe of Columbia Gas and not repeated in the record. See page 583.]
2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item 2 of Counter Praecipe of Columbia Gas and not repeated in the record. See page 581.]
3. Plaintiff's exceptions to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item

3 of Counter Praecipe of Columbia Gas and not repeated in the record. See page 589.]

[fol. 862] 4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939, on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan", filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936 to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof: [Same as Item 7 in the Counter Praecipe of Columbia Gas and not repeated in the record. See page 221.]

Exhibit C—Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. [Item appears in Counter Praecipe of Columbia Gas and not repeated in the record. See page 229.]

Exhibits D and E—Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil [fol. 863] & Gasoline Corporation approving the financing agreement of January 31, 1936. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 238.]

Exhibit F—Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas

Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company. [Item appears in Counter Praecept of Columbia Gas and not repeated in the record. See page 241.]

Exhibit G—Letter, dated March 17, 1936, of Gano Dunn to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936. [Same item appears in Counter Praecept of Columbia Gas and not repeated in the record. See page 318.]

Exhibit K—Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E. [Same item appears in Counter Praecept of Columbia Gas and is not repeated in the record. See page 319.]

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization". [Same item appears in Counter Praecept of Columbia Gas and is not repeated in the record. See page 347.]

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights". [Item appears in Counter Praecept of Columbia Gas and is not repeated in the record. See page 358.]

[fol. 864] (c) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Sala-

ries and Compensation". [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 360.]

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company". [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. (See page 369.)]

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri Kansas Pipe Line Company ordering the postponement of the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the Plan, and the petition on which said order is based. [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in this record. See page 596.]

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

June 27, 1940.

Service of the attached praecipe is herewith acknowledged this 28th day of June, A. D. 1940.

(Sgd.) Stewart Lynch, C. A. Southerland, C. S. Layton, C. Edward Duffy, Logan and Duffy.

[fol. 865] IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL OF MISSOURI-KANSAS PIPE LINE COMPANY—Filed July 13, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Gas & Electric Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out

from the said praecipe Item 4 thereof specifying the inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Arthur G. Logan, Solicitor for Missouri-Kansas Pipe ~~Line~~ Company. (Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) Daniel C. Hastings, Solicitor for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 866] IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF MISSOURI-KANSAS PIPE LINE COMPANY—Filed July 16, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Oil & Gasoline Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out from the said praecipe Item 5 thereof specifying ~~the~~ inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support

of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) C. Edward Duffy, Logan and Duffy, Solicitor for Missouri-Kansas Pipe Line Company. (Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation. (Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 867] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 868] IN UNITED STATES DISTRICT COURT

ORDER DENYING LEAVE TO PANHANDLE EASTERN PIPE LINE COMPANY TO INTERVENE—Filed April 23, 1940

And now, to-wit, this 23d day of April, A. D. 1940, the above stated cause coming on to be heard upon the motion of certain of the defendants, and affidavits in support thereof, to dismiss an application purporting to be an application of Panhandle Eastern Pipe Line Company praying for leave to become a party to the above entitled cause and for other relief in the said petition set forth and the motion having been argued by the solicitors for the several parties and considered by the Court, it is

Ordered by the Court that the said motion be and it is hereby granted, and the said purported application shall be and it is hereby dismissed.

(Sgd.) John P. Nields, J.

[fol. 869] IN UNITED STATES DISTRICT COURT

PETITION OF PANHANDLE EASTERN PIPE LINE COMPANY FOR APPEAL—Filed June 14, 1940

Panhandle Eastern Pipe Line Company, petitioner, considering itself aggrieved by the decree made and entered on the 23d day of April, 1940, in the above-entitled cause,

does hereby appeal from said order and decree to the Supreme Court of the United States, and in support of this, its petition for appeal, shows unto the Court:

The action in this Court was brought by the United States under the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation and certain individuals to enjoin them from continuing to engage in a conspiracy in restraint of trade and commerce among the States in natural gas, from exercising any dominion or control over Panhandle Eastern Pipe Line Company, and from further restraining or interfering in any manner with the free and independent action of Panhandle Eastern Pipe Line Company in the production, transportation, or sale and delivery of natural gas. Said action also sought to dissolve the restraint and monopoly [fol. 870] by causing Columbia Oil & Gasoline Corporation to divest itself of all stock and bonds of Panhandle Eastern Pipe Line Company. The action was begun by the United States filing its petition on March 26, 1935. On October 30, 1935, the United States filed an amended and supplemental petition. Said amended and supplemental petition sets forth the following facts:

(a) The defendant Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas") was and is extensively engaged in trade and commerce among the States in natural gas through subsidiaries and affiliates, and as stated in the petition, "Its greatest concentration of operations is in the State of Ohio, in a large portion of which State it has for many years past enjoyed a virtual monopoly in the sales and distribution of natural mixed and artificial gas." (Par. 15.)

(b) The defendant Columbia Oil & Gasoline Corporation (hereinafter referred to as "Columbia Oil") was organized by Columbia Gas to hold the oil, gasoline and gas-producing properties of the so-called Columbia System. That is to say, the subsidiaries and affiliates of Columbia Gas above mentioned. (Par. 14.)

(c) Missouri-Kansas Pipe Line Company, (hereinafter referred to as "Mokan") was organized for the purpose of producing, transporting, distributing and selling natural gas. It caused the organization of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and became the owner of the entire capital stock. [fol. 871] of said corporation. Panhandle Eastern was organized for the purpose of building and operating a natural gas pipe line from the gas-producing territories of the Texas Panhandle and Kansas, through the States of Oklahoma, Kansas, Missouri, Illinois and Indiana, up to the City of Indianapolis with extensions to the Cities of Detroit, Michigan and Dayton and Cincinnati, Ohio. (Par. 16.)

(d) The defendants engaged in a combination and a conspiracy in June, 1930, to restrain and monopolize trade and commerce among the States in natural gas, particularly in the States of Indiana, Michigan and Ohio, in violation of the anti-trust laws. The purpose of the defendants was to prevent Panhandle Eastern from making available, either directly or indirectly, its very large supplies of natural gas in such manner as to compete with the Columbia System or endanger its monopolization of the distribution and sale of natural gas in the States of Michigan and Ohio, and among other things, to bring Mokan and Panhandle Eastern to such a financial condition that the defendants would be enabled to acquire the complete domination and ownership of Panhandle Eastern's physical assets and properties. (Par. 17.)

(e) The defendants Columbia Oil and Columbia Gas were able to and did acquire 50 per cent of the common stock of Panhandle Eastern and all of its outstanding debt. (Pars. 18 and 22.)

(f) Said defendants also obtained control of the Board of Directors and management of Panhandle Eastern. (Par. 23.)

[fol. 872] (g) Mokan retained 50 per cent of the common stock of Panhandle Eastern, but in order to maintain said 50 per cent interest, was required to advance approximately \$5,000,000. In order to raise said amount, Mokan pledged its 50 per cent of the common stock of Panhandle Eastern. (Par. 24.)

(h) Thereafter, the defendants, through their control over Panhandle Eastern, prevented it from selling natural gas, and thus it had no earnings sufficient to make interest or dividend payments to Moka which would have enabled Moka to pay the interest on its debt. (Pars. 26 to 29.)

(i) Moka was thereupon forced into receivership. (Par. 27.)

(j) Columbia Oil thereafter acquired control of substantially all of Moka's 50 per cent interest in the common stock of Panhandle Eastern, thus giving the Columbia Companies control of Panhandle Eastern free from Moka's minority interest. (Pars. 29 to 32.)

(k) Defendants were, at the time the petition was filed, engaged in other acts and transactions which would have given them 100 per cent ownership of the common stock of Panhandle Eastern. (Par. 31.)

On January 29, 1936, a stipulation was entered into between the parties to said action and a consent decree was entered thereon the same day.

[fol. 873] The stipulation provided, inter alia:

"The defendant Columbia Oil agrees to make, within 48 hours of the entry of the attached decree, a bona fide offer in writing to the Receivers of Missouri-Kansas Pipe Line Company appointed by the Delaware Chancery Court, providing among other things for the settlement of the claims of the Receivers asserted against the defendants herein and the acquisition by the Receivers of a direct interest in the stock of Panhandle Eastern Pipe Line Company, to the extent of one-half of the initial amount of common stock of Panhandle Eastern Pipe Line Company to be outstanding after a recapitalization thereof, * * *"

Pursuant to the provisions of the stipulation, an offer of settlement was made to the receivers of Moka whereby they reacquired a direct interest in the stock of Panhandle Eastern. At present, the interest of Moka is approximately 42% of the common stock in said company.

The consent decree also provided for the appointment of a trustee to hold the stock of Columbia Oil and to vote it for Directors recommended by Columbia Oil. Gano Dunn was appointed as such trustee by said consent decree. His

power to vote as a stockholder on other matters than the election of directors is:

“(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree.”

The consent decree further provided:

“IV

That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any [fol. 874] firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter):

That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any way prevent the free transportation, sale and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate spe-

cific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder.

V

That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

On December 21, 1939, the United States moved for leave to serve a supplemental complaint. The motion was granted and a supplemental complaint filed January 12, 1939. [fol. 875] In and by this supplemental complaint, the United States pointed out that there was, "Necessity for further action by this Court to achieve the purposes of the decree" (i. e. Consent Decree). This supplemental complaint then alleged:

"(a) In the period of almost three years which has elapsed since the entry of the decree of January 29, 1936, no steps of any kind have been taken toward the effective termination of all control by Columbia Gas of Panhandle Eastern, * * * The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) That the only effective and independent way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil; or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of Section III of said decree, and (2) that to accomplish the purpose of said decree, by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture."

Said supplemental complaint prayed a divestiture either by Columbia Gas of its Columbia Oil Holdings or by Columbia Oil of its Panhandle Eastern holdings.

Thereafter, on May 15, 1939, the United States moved for leave to withdraw said supplemental complaint of January 21, 1938, to vacate the consent decree of January 29, 1936, and to file an amended and supplemental complaint. Annexed to said motion is a copy of the proposed amended and supplemental bill of complaint. In and by this amended and supplemental complaint, the Government alleges that the Columbia Companies have continued at all times since the entry of the consent decree to violate the anti-trust laws, [fol. 876] among other things, by continuing to exercise dominion and control over Panhandle Eastern notwithstanding the terms of said decree. Prayers "F" and "G" of said complaint specifically are that:

"F. The defendant Columbia Oil shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Panhandle Eastern.

"G. The defendant Columbia Gas shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Michigan Gas Transmission Company."

No proceedings have been had by the Court on said motion.

Instead, thereafter, on June 20, 1939, the defendants proposed that the consent decree be modified, and offered a plan purporting to end the restraint and monopoly.

Three weeks after the United States filed its supplemental complaint on December 21, 1938, as aforesaid, Moka filed a motion for leave to intervene in the cause. This motion was denied. On June 5, 1939, after the United States had filed its motion to file an amended and supplemental complaint, Moka again sought leave to intervene. This was denied. Moka took appeals from the orders denying it leave to intervene to the United States Circuit Court of Appeals for the Third Circuit, which appeals were dismissed (110 F. (2d) 15) on the ground that under the provisions of the so-called "Expediting Act", 15 U. S. C. A. Sec. 29 as interpreted by the Supreme Court of the United States in the case of United States vs. California Co-operative Canneries, 279 U. S. 553, 73 L. Ed. 838, appeals to in- [fol. 877] tervene in a cause such as the instant one, wherein

the United States is complainant, could only be taken to the Supreme Court of the United States and that there was no jurisdiction in the Circuit Court to entertain the appeals. A petition for writs of certiorari to review said decision of the Circuit Court of Appeals was denied on the 22d day of April, 1940.

On January 15, 1940, Mogan, as the owner and holder of 339,275 shares of the common stock of Panhandle Eastern, made demand upon Panhandle Eastern and the officers and directors thereof, including the trustee appointed by the consent decree, that an application be made by Panhandle Eastern for the relief to which it is entitled under Sections IV and V of the consent decree, (i. e. under said above quoted provisions that, etc.). But Panhandle Eastern, its officers and directors, neglected and refused to comply with said demand and take said action against the defendants, due to the fact that its board of directors is controlled by the defendants and nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas. Columbia Oil is the beneficial owner of 404,326 shares of the common stock of Panhandle Eastern, which constitutes in excess of 50% of the total issued and outstanding and is the beneficial owner of all the issued and outstanding preferred stock of Panhandle Eastern. The stock beneficially owned by Columbia Oil has voting rights sufficient to elect two more than a majority of directors. This stock stands in the name of Gano Dunn [fol. 878] as Trustee under the consent decree. He has acted for Columbia Oil in placing their nominees on the Board of Panhandle Eastern and has taken directions from it at all times as to the manner in which the affairs of Panhandle Eastern should be conducted. The application of Missouri-Kansas Pipe Line Company, states, inter alia:

"The reason Panhandle Eastern, its officers and directors have not taken action is that said Board is controlled by said Gano Dunn and five nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas as aforesaid to the great loss and damage of Panhandle Eastern."

At the annual meeting of stockholders of Panhandle Eastern held on March 11, 1940, resolutions were proposed

that Panhandle Eastern take the action which Mogan demanded that it take. The resolutions were in the following forms:

"Whereas by letter dated January 15, 1940, to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas, this corporation, its officers and directors have failed and neglected to comply therewith in any respects; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, Therefore, be it resolved that this corporation take the actions set forth and described in paragraphs 1 to 6 inclusive of said letter of January 15, 1940 and

[fol. 879] Be it Further Resolved that the officers of this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be it Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services."

The letter of January 15, 1940, had included a demand that Panhandle Eastern make application under Section V of the aforesaid consent decree for the relief to which it is entitled under Section IV, and the letter had set forth the particular nature of the relief to which Panhandle Eastern was entitled and the acts of the Columbia Companies giving such rights which were in many ways in violation of the consent decree. The application filed herein by Panhandle Eastern alleges matters and facts stated in said letter and makes application for leave to intervene and assert the

rights said letter had demanded that Panhandle Eastern pursue under the provisions of Section V of said consent decree.

The foregoing resolutions were put to a vote at which time all stockholders present and all proxies for stockholders, including the proxies for Mokan, voted in favor of the resolutions, except Mr. Dunn, who voted against them. The Chairman declared the motion to adopt the resolutions was lost. At the time Mr. Dunn's vote was challenged upon the grounds that he could not vote against the resolutions because:

[fol. 880] a. He had not been directed to do so by Columbia Oil and Gasoline Corporation, or

b. If he had been so directed, such directions would have been inconsistent with the purposes of the consent decree and hence could not be followed.

It is obvious that Section V of the Decree, in so far as it permits Panhandle Eastern to intervene "upon proper application" is a nullity if the words "upon proper application" are construed to mean an application made after corporate action by Panhandle Eastern in which Columbia Oil participates. Any proceedings that might be taken by Panhandle Eastern under Section IV of the Decree would be adverse to the defendants in this case. If the Columbia Oil stock can be voted so as to block any action under Section V, it will obviously be voted that way. Therefore, when the stockholders other than Gano Dunn on behalf of Columbia voted that Panhandle Eastern should intervene and assert its right against Columbia under Section V of the decree, Messrs. Bulkley, Hardy and Logan prepared and filed the instant application under and pursuant to the resolutions aforesaid upon the theory that the vote of Gano Dunn was invalid and should not have been entertained and that, therefore, the resolutions had been properly adopted by the corporation.

After said application herein was filed, motions to dismiss were made by Columbia Oil and others. The District Court in its opinion held:

[fol. 881] "The motion to dismiss the alleged application of Panhandle Eastern for leave to become a party hereto

and for other relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.
2. The attorneys whose names appear on said application as attorneys for Panhandle Eastern were not authorized by that company to act in its behalf in filing such application.
3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the annual meeting of March 11, 1940, in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil."

As Panhandle Eastern has neglected and refused to make an application in the cause to become a party for the purpose of enforcing the rights conferred upon it by Section IV of the consent decree, which neglect and refusal is occasioned through the domination and control which the Columbia Companies continue to exert over Panhandle Eastern, its officers and directors, and as the rights conferred by Section IV are valuable rights under the decree as aforesaid against the Columbia Companies and those acting with them to prevent Panhandle Eastern Pipe Line Company from engaging freely and independently in trade and commerce among the states in natural gas, the decree of the United States District Court for the District of Delaware, denying Panhandle Eastern leave to intervene and assert these valuable rights constitutes, unless reversed, an effectual deprivation of those rights, including the right to a full and complete enjoyment of the consent decree.

[fol. 882] Petitioner files herein its assignment of errors which specifies the reasons for which it considers itself aggrieved by the decree and order entered herein on April 23, 1940.

Petitioner also files herewith its Jurisdictional Statement.

Wherefore, petitioner prays that this appeal may be allowed and that a citation issue as provided by law directed to the respondents above named commanding them and each of them to be and appear before the Supreme Court of the United States to do and receive what may appertain to equity and justice in the premises and that the decree and

order denying the application of Panhandle Eastern Pipe Line Company be reversed.

Dated June 14, 1940.

Panhandle Eastern Pipe Line Company, by (Sgd.)
Arthur G. Logan, 303 Delaware Trust Building,
Wilmington, Delaware, Its Attorney.

Robert J. Bulkley, Bulkley Building, Cleveland, Ohio;
Russell Hardy, 720 Fifteenth Street, Washington, D. C.;
Arthur G. Logan, Delaware Trust Building, Wilmington,
Delaware, of Counsel.

[fol. 883] IN UNITED STATES DISTRICT COURT

PANHANDLE EASTERN PIPE LINE COMPANY'S ASSIGNMENT OF
ERRORS—Filed June 14, 1940

Now Comes Panhandle Eastern Pipe Line Company, petitioner in the above-entitled cause, appellant, by its attorneys, and files the following assignment of errors upon which it will rely on its appeal herein to the Supreme Court of the United States:

1. The Court erred in denying the application of Panhandle Eastern Pipe Line Company for relief under the consent decree of the Court entered on January 29, 1936.
2. The Court erred in granting the motions of the defendants to dismiss the application of Panhandle Eastern Pipe Line Company and dismissing said application.
3. The Court erred in entering the decree on April 23rd, 1940, and holding that said application was not authorized by Panhandle Eastern Pipe Line Company.
4. The Court erred in holding that the attorneys, whose names appear on said application as attorneys for Panhandle Eastern Pipe Line Company were not authorized by that company to act in its behalf in filing such application.
5. The Court erred in holding that Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern Pipe Line Company on all matters in which he voted at the annual meeting on March 11, 1940, in accordance with the provisions of said consent decree and pursuant to valid directions from Columbia Oil and Gasoline Corporation.

~~[fol. 884]~~ 6. The court erred in not holding that Gano Dunn should not have voted upon the resolution proposing that Panhandle Eastern Pipe Line Company take the actions set forth and described in Paragraphs 1 to 6 inclusive of the letter of January 15, 1940, from Missouri-Kansas Pipe Line Company to Panhandle Eastern Pipe Line Company, its officers and directors.

7. The Court erred in not holding that the resolution proposed at the annual meeting of stockholders on March 11, 1940, that Panhandle Eastern Pipe Line Company take the actions set forth and described in Paragraphs 1 to 6 inclusive of the letter of January 15, 1940, from Missouri-Kansas Pipe Line Company to Panhandle Eastern Pipe Line Company, its officers and directors, was not duly adopted and passed and became binding upon all parties in interest and was the action of Panhandle Eastern Pipe Line Company.

Wherefore, the petitioner-appellant prays that the decree of the United States District Court for the District of Delaware entered on April 23, 1940, denying the application of Panhandle Eastern Pipe Line Company, be reversed by the Supreme Court of the United States, and that petitioner-appellant be granted the relief prayed for by it in its application.

(Sgd.) Arthur G. Logan, Logan and Duffy, 303 Delaware Trust Building, Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company, Petitioner-Appellant.

Robert J. Bulkley, Bulkley Building, Cleveland, Ohio; Russell Hardy, 729 Fifteenth St., Washington, D. C.; Arthur G. Logan, Delaware Trust Bldg., Wilmington, Delaware.

[fol. 885] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL BY PANHANDLE EASTERN PIPE LINE COMPANY—Filed June 14, 1940

And Now, to-wit, this 14th day of June, A. D. 1940, the petition for appeal of Panhandle Eastern Pipe Line Company filed by Arthur G. Logan, Esq., as its attorney, to-

gether with the assignments of error, prayer for reversal and statement as to jurisdiction, having been presented to, read and maturely considered by the Court, upon motion of Arthur G. Logan, Esq., it is, pursuant to the statutes and the Rules of the Supreme Court of the United States in such case made and provided,

Ordered by the Court that an appeal as prayed for in said petition for appeal be and the same hereby is allowed to the Supreme Court of the United States from the District Court of the United States for the District of Delaware in this cause as provided by law; and

It is Further Ordered by the Court that security for costs on appeal be and the same hereby is fixed in the sum of Two Hundred Fifty Dollars (\$250.00); and

It is Further Ordered by the Court that the Clerk of the District Court of the United States for the District of Delaware shall prepare and certify a transcript of the record, proceedings and decree and transmit the same to the Supreme Court of the United States and that he shall have the same in said Court on or before forty (40) days from this date.

(Sgd.) John P. Nields, J.

[fols. 886-887] CITATION AND SERVICE ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed June 18, 1940, omitted in printing

[fol. 888] IN UNITED STATES DISTRICT COURT

PRAECIPE OF PANHANDLE EASTERN PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed June 18, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to prepare a transcript of record to be transmitted to the Supreme Court of the United States pursuant to the order allowing an appeal as prayed

for by Panhandle Eastern Pipe Line Company, which order was heretofore filed on June 14, 1940, in this cause, and to include therein the following papers:

1. Docket Entries.
2. Amended and supplemental petition of the plaintiff filed October 30, 1935.
3. Answer of defendants Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed January 29, 1936.
4. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed January 29, 1936.
5. Answer of defendant John H. Hillman, Jr., filed January 29, 1936.
6. Answer of defendant Burt R. Bay, filed January 29, 1936.
7. Stipulation and Decree that defendants be enjoined [fol. 889] and appointing Gano Dunn as trustee, &c., filed January 29, 1936.
8. Amended and supplemental petition of plaintiff filed January 12, 1939.
9. Motion and attached petition of Missouri-Kansas Pipe Line Company for leave to intervene and order filed February 6, 1939.
10. Answer of John H. Hillman, Jr., defendant, filed February 24, 1939.
11. Opinion of Court filed March 29, 1939.
12. Order denying intervention filed March 30, 1939.
13. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed May 15, 1939.
14. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed May 15, 1939.
15. Motion of plaintiff for leave to withdraw supplemental complaint, filed May 15, 1939.
16. Motion of plaintiff to vacate decree, etc., filed May 15, 1939.
17. Motion and Plan of defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, filed June 20, 1939.
18. Motion and annexed petition of Missouri-Kansas

Pipe Line Company for leave to intervene and affidavit of service filed July 5, 1939.

[fol. 890] 19. Order denying intervention filed July 10, 1939.

20. Order of reference of Plan to special master dated July 10, 1939.

21. Opinion of William Prickett, Esq., Special Master, filed July 29, 1939.

22. Summary of plan, findings of fact, conclusions of law and recommendations of Special Master and testimony before him, filed July 29, 1939.

23. Report of William Prickett, Special Master, with papers therein mentioned, filed August 5, 1939.

24. Objections by Missouri-Kansas Pipe Line Company to report of Special Master, filed August 8, 1939.

25. Objections of City of Detroit to report of Special Master, filed August 12, 1939.

26. Application of Panhandle Eastern Pipe Line Company to be made a party, etc., and order setting same down for hearing. Filed March 23, 1940.

27. Motion of Columbia Gas & Electric Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson, filed, March 29, 1940.

28. Motion of Columbia Oil & Gasoline Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson, filed March 29, 1940. (Omit exhibits which are on motion of Columbia Gas & Electric Corporation #27.)

[fol. 891] 29. Opinion of Court, filed April 6, 1940.

30. Order denying application of Panhandle Eastern Pipe Line Company for leave to become a party, etc. filed, April 23, 1940.

31. Petition for Appeal, filed June 14, 1940.

32. Assignments of error, filed June 14, 1940.

33. Jurisdiction Statement, filed June 14, 1940.

34. Motion required by Paragraph 2 of Rule 12 of the Rules of the Supreme Court with proof of service of it and papers required by said paragraph 2 of the Rules of the Supreme Court of the United States.

35. Copy of citation with proof of service.

36. Clerk's Certificate.

37. This praecipe with proof of service.

(Sgd.) Arthur G. Logan, Logan and Duffy, 303 Delaware Trust Bldg., Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 892] IN UNITED STATES DISTRICT COURT

AMENDED PRAECIPE OF PANHANDLE EASTERN PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed July 1, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to amend the praecipe heretofore filed by Panhandle Eastern Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 22 thereof and substitute in lieu thereof the following:

"22. Summary of Plan, Findings of Fact, Conclusions of Law and Recommendations of Special Master, filed July 29, 1939. Do not include testimony before Special Master."

2. Strike out paragraph 23 and substitute in lieu thereof the following:

"23. The report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith."

3. Add the following:

"38. Order allowing appeal entered June 14, 1940."

4. Change the word "motion" in item 34 to "notice".

5. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Building Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

[fol. 893] Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe; C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 894] IN UNITED STATES DISTRICT COURT

AMENDED PRAECIPE OF PANHANDLE EASTERN PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed July 6, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to further amend the praecipe heretofore filed by Panhandle Eastern Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 23 as amended and substitute in lieu thereof the following:

"23. The Report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith, except item #7."

2. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Bldg., Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America; C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas G. Gregory, Edward Reynolds, Jr. and Burt R. Bay; Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe; C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 895] IN UNITED STATES DISTRICT COURT

COUNTER-PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed June 28, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to include in the Transcript of Record on the purported appeal by Panhandle Eastern Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe purportedly filed by the said Panhandle Eastern Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939,

2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939.

3. Plaintiff's exceptions to the report of William Prickett Esq., Special Master, filed in August, 1939.

[fol. 896] 4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939, on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan", filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936 to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof:

Exhibit C—Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation.

Exhibits D and E—Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation approving the financing agreement of January 31, 1936.

Exhibit F—Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company.

Exhibit G—Letter, dated March 17, 1936, of Gano Dunn [fol. 897] to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line

Company and Michigan Gas Transmission Corporation, dated March 17, 1936.

Exhibit K—Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E.

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization".

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights".

(c) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Salaries and Compensation".

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company".

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri-Kansas Pipe Line Company ordering the postponement of [fol. 898] the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the plan, and the petition on which said order is based.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

June 27, 1940.

[fol. 899] IN UNITED STATES DISTRICT COURT

COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed June 28, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to include in the Transcript of Record on the purported appeal by Panhandle Eastern Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe purportedly filed by the said Panhandle Eastern Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [See Item 1 of Counter Praecipe of Columbia Gas—not repeated in the record. Turn to page 583.]

2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item 2 in Counter Praecipe of Columbia Gas and not repeated in the record. See page 581.]

3. Plaintiff's exceptions to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 589.]

[fol. 900] 4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939; on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan", filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936 to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof: [Same as Item 7 in the Counter Praecipe of Columbia Gas and not repeated in the record. See page 221.]

Exhibit C. Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. [Item appears in Counter Praecipe of Columbia Gas and not repeated in the record. See page 229.]

Exhibits D and E. Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation approving the financing agreement of January 31, 1936. [Items appear in Counter Praecipe of Columbia Gas and are not repeated in the record. See page 238.]

[fol. 901] Exhibit F. Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 241.]

Exhibit G. Letter, dated March 17, 1936, of Gano Dunn to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 318.]

Exhibit K. Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E. [Item

appears in Counter Praecept of Columbia Gas and is not repeated in the record. See page 319.]

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization". [Item appears in Counter Praecept of Columbia Gas and is not repeated in the record. See page 347.]

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights". [Item appears in Counter Praecept of Columbia Gas and is not repeated in the record. See page 358.]

(c) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Salaries and Compensation". [Item appears in Counter [fol. 902] Praecept of Columbia Gas and is not repeated in the record. See page 360.]

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company". [Not repeated. See page 369.]

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri-Kansas Pipe Line Company ordering the postponement of the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the Plan,

and the petition on which said order is based. [See page 196.]

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

June 27, 1940.

Service of the attached praecipe is herewith acknowledged this 28th day of June, A. D. 1940.

(Sgd.) Stewart Lynch, C. A. Southerland, C. S. Layton, C. Edward Duffy, Logan and Duffy.

[fol. 903] IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed July 13, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Gas & Electric Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out from the said praecipe Item 4 thereof specifying the inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Arthur G. Logan, Solicitor for Panhandle Eastern Pipe Line Company. (Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 904] .IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed July 16, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Oil & Gasoline Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out from the said praecipe Item 4 thereof specifying the inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) C. Edward Duffy, Logan and Duffy, Solicitor for Panhandle Eastern Pipe Line Company.

(Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

(Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 905] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 906] IN SUPREME COURT OF THE UNITED STATES

No. 268.

APPELLANT'S STATEMENT OF THE POINTS ON WHICH IT INTENDS TO RELY AND OF THE PARTS OF THE RECORD WHICH IT THINKS NECESSARY FOR THE CONSIDERATION THEREOF—
Filed August 5, 1940

The appellant will rely upon the points stated in its assignment of errors, and upon the following points:

Rule 24 of the Federal Rules of Civil Procedure with regard to intervention was intended to clarify and enlarge the privilege of intervention beyond preexisting limitations, and not, as the District Court construed and applied the rule, to effect a curtailment of the intervention privilege.

The application of the appellant to intervene was timely, in that it was based upon facts showing a continuation of the same conspiracy dealt with in the main action, and its existence at the time of the intervention, and upon specific acts in violation of the decree of January 29, 1936, currently [fol. 907] occurring and in existence at the time of the intervention.

The application to intervene should have been allowed because the representation of appellant's interest by the existing parties may be inadequate.

The application should have been allowed because the appellant has an interest in the subject of the main action, which is a restraint and monopolization of trade in natural gas in violation of the antitrust laws, created and maintained by the defendants, in that appellant is a large stockholder of Panhandle Eastern Pipe Line Company, a majority of whose stock was illegally acquired and is being illegally held and used by the defendants to conduct, restrict and curtail the trade, business and affairs of Panhandle Eastern Pipe Line Company solely for the benefit of the defendants, contrary to the interest of Panhandle Eastern Pipe Line Company, of all of its stockholders, and of the public.

The application should have been allowed because the appellant has an interest in the relief demanded in the main action and awarded in terms by the decree, but which has never been actually realized by any compliance whatsoever on the part of the defendants with the requirements of the decree, i. e., specific requirements for the termination of the conspiracy and dissolution of the restraint and monopolization.

The application should have been allowed because appellant may be bound by a judgment in the main action, in that [fol. 908] a judgment might be entered, and in fact is actually currently proposed, which would in fact seriously prejudice or completely preclude the realization by the appellant of any effectual relief in another and independent proceeding.

The application should have been allowed because the

appellant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of an officer of the court.

The application should have been allowed because appellant's claim and the main action present common questions of law and fact, in that both deal with acts done in pursuance of one and the same conspiracy violative of the same statutes, i. e., the antitrust laws.

The application should have been allowed because the intervention would not have unduly delayed or prejudiced the adjudication of the rights of the original parties, because the main action and the intervention case were based on the same conspiracy.

The appellant thinks that all of the record, except the portions included at the request of the appellees which portions are enumerated in the cross-praecipes of appellees, is necessary for the consideration of the above points.

Arthur G. Logan, Logan and Duffy, Continental American Building, Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

[fol. 909] Service of a copy of the foregoing statement is hereby admitted this 2nd day of August, 1940.

Stewart Lynch lb, Attorney for the United States of America. Clarence A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 909a] [File endorsement omitted.]

[fol. 910] IN SUPREME COURT OF THE UNITED STATES

No. 268

DESIGNATION BY APPELLEE COLUMBIA OIL & GASOLINE CORPORATION OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED
—Filed August 10, 1940.

Columbia Oil & Gasoline Corporation, one of the appellees in the above entitled cause, although not conceding the ma-

teriality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designates the following parts of the record which it thinks material, in addition to the parts of the record so set forth by appellant, pursuant to paragraph 9 of Supreme Court Rule 13, viz:

All the papers set forth in the cross-praeceipe of appellee Columbia Oil and Gasoline Corporation indicating the additional portions of the record desired to be included in the transcript of the record, filed with the Clerk of the United States District Court for the District of Delaware on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation, Continental American Building, Wilmington, Delaware.

Dated August 8, 1940.

[fol. 910a] [File endorsement omitted.]

[fol. 911] IN SUPREME COURT OF THE UNITED STATES

No. 268

[Title omitted]

STATEMENT BY APPELLEE OF ADDITIONAL PARTS OF THE RECORD
TO BE PRINTED—Filed August 12, 1940

Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr.; appellees in the above entitled cause, although not conceding the materiality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designate the following parts of the record which they think material, in addition to the parts of the record so set forth by appellant, pursuant to paragraph 9 of Supreme Court Rule 13, viz:

The papers set forth in the designation of additional portions of the record desired to be included in the transcript [fol. 912] of the record, filed with the Clerk of the United States District Court for the District of Delaware on behalf of the above-mentioned appellee Columbia Gas & Electric

Corporation on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Douglas M. Moffat, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr.

Dated August 9, 1940.

[fol. 912a] [File endorsement omitted.]

[fol. 913] IN SUPREME COURT OF THE UNITED STATES

No. 269

APPELLANT'S STATEMENT OF THE POINTS ON WHICH IT INTENDS TO RELY AND OF THE PARTS OF THE RECORD WHICH IT THINKS NECESSARY FOR THE CONSIDERATION THEREOF—
Filed August 5, 1940

The appellant will rely upon the points stated in its assignment of errors.

The appellant thinks that all of the record, except the portions included at the request of the appellees which portions are enumerated in the cross-petitions of appellees, is necessary for the consideration of the above points.

Arthur G. Logan, Logan and Duffy, Continental American Building, Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company.

[fol. 914] Service of a copy of the foregoing statement is hereby admitted this 2nd day of August, 1940.

Stewart Lynch lb, Attorney for the United States of America. Clarence A. Southerland, Attorney for Columbia Gas & Electric Corporation; George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., and Burt R. Bay. Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 914a] [File endorsement omitted.]

[fol. 915] IN SUPREME COURT OF THE UNITED STATES

No. 269

DESIGNATION BY APPELLEE COLUMBIA OIL & GASOLINE CORPORATION OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed August 10, 1940

Columbia Oil & Gasoline Corporation, one of the appellees in the above entitled cause, although not conceding the materiality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designates the following parts of the record which it thinks material, in addition to the parts of the record so set forth by appellant, pursuant to paragraph 9 of the Supreme Court Rule 13, viz:

All the papers set forth in the cross-præcipe of appellee Columbia Oil & Gasoline Corporation indicating the additional portions of the record desired to be included in the transcript of the record, filed with the Clerk of the United States District Court for the District of Delaware on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation, Continental American Building, Wilmington, Delaware.

Dated August 3, 1940.

[fol. 915a] [File endorsement omitted.]

[fol. 916] IN SUPREME COURT OF THE UNITED STATES

No. 269

STATEMENT BY APPELLEE OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed August 12, 1940

Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr., appellees in the above entitled cause, although not conceding the materiality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designate the following parts of the record which they think material, in addition to the

parts of the record so set forth by appellant, pursuant to paragraph 9 of Supreme Court Rule 13, viz:

The papers set forth in the designation of additional portions of the record desired to be included in the transcript of the record, filed with the clerk of the United States [fol. 917] District Court for the District of Delaware on behalf of the above-mentioned appellee Columbia Gas & Electric Corporation on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Douglas W. Moffat, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr.

Dated August 9, 1940.

[fol. 917a] [File endorsement omitted.]

Endorsed on cover: File No. 44,617. Delaware, D. C. U. S., Term No. 268. Missouri-Kansas Pipe Line Company, Appellant, vs. The United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al. Filed July 22, 1940. Term No. 268 O. T. 1940.

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